



**Connecticut  
Department of Mental Retardation  
Independent Contractor/Consultant  
Ethics Compliance Protocol**

**Peter O'Meara, Commissioner**

Effective: July 1, 2000

**INDEPENDENT CONTRACTOR/CONSULTANT  
ETHICS PROTOCOL**

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## **Section I**

### **INDEPENDENT CONTRACTOR/CONSULTANT**

### **ETHICS PROTOCOL**



State of Connecticut  
Department of Mental Retardation

**Connecticut**  
**DEPARTMENT OF MENTAL RETARDATION**  
**INDEPENDENT CONTRACTOR/CONSULTANT ETHICS COMPLIANCE PROTOCOL**

**EFFECTIVE DATE:** July 1, 2000

**AUTHORIZED BY:** Peter H. O'Meara, Commissioner

**I. Purpose:**

To establish an internal process to address compliance with the State of Connecticut Statutes and the Ethics Commission Advisory Opinions regarding ethics as they relate to Independent Contractor/Consultant's use of Department of Mental Retardation (DMR) contracted funds and authority granted through those contracts from DMR.

These protocols do not apply to families and individuals participating in the Self-Determination program.

**II. Definitions:**

**Advisory Opinion:**

An official written ruling, by the State Ethics Commission, interpreting Connecticut General Statutes relating to ethics.

**Advisory Opinion 99-14:**

The State Ethics Commission's official ruling, July 9, 1999, regarding Application of Conn. Stat. 1-86e To The Hiring Of Relatives By Independent Contractors And Their Staff.

**Advisory Opinion 99-15:**

The State Ethics Commission official ruling, July 9, 1999, regarding Application of Ethics Rules To Acceptance Of Expense Payments To Accompany Department of Mental Retardation Client To Event. For \$100.00 limit, see Advisory Opinion 99-17

**Advisory Opinion 99-17**

The State Ethics Commission's official ruling, July 9, 1999, regarding Application of Gift Restrictions To Employees of Private agencies Under Contract With Department Of Mental Retardation.

**Advisory Opinion 99-19**

The State Ethics Commission official Ruling, July 9, 1999, regarding Application Of Conn. Gen. Stat. 1-86e To Independent Contractors' Use of State Funds To Benefit Related Party.

**DMR Ethics Committee for Independent Contractor/Consultants:**

DMR's internal committee that is solely responsible to review and approve or disapprove submission(s) by s regarding ethics interpretations as detailed in the State Ethics Commission Advisory Opinion Letters (99-14, 99-15, 99-17, and 99-19) pertaining to the use of state and individual's funds.

**Ethics Codes/Requirements:**

Any State of Connecticut Statute, Regulation, or State Ethics Commission Advisory Opinion that addresses Connecticut ethics requirements.

**Exempt Position:**

A professional, administrative or executive position that is exempt from overtime under State and Federal law.

**Person:**

An individual, sole proprietorship, trust, corporation, limited liability company, union, association, firm, partnership, committee, club or other organization or group of persons [1-79(i) Code of Ethics for Public Officials, Definitions "Persons"].

**Immediate Family:**

A person's spouse or child, this also includes a dependent relative residing in the person's household [1-79(f) Code of Ethics for Public Officials, Definitions "Immediate Family"].

**Individual:**

A person with mental retardation under the auspices of DMR and residing with or served by an independent contractor/consultant. Also may be referred to as "Client".

**Independent Contractor/Consultant:**

A person (see definition of person) that contracts with the State of Connecticut Department of Mental Retardation for services and/or supports. This also includes employees of the independent contractor or consultants funded by DMR.

**Necessary Expense:**

Those expenses that are necessary to the event. These could include, but may not limited to reasonable travel, accommodations, and meals for the event. The employee will provide his or her own spending money. (Reference Advisory Opinions 99-15 and 99-17).

**Related Party:**

Related party has been defined in the Department of Social Services (formerly Department of Income Maintenance) rate setting regulations section 17-313b-1(19). That definition is, "Related Parties means person or organizations related through marriage, ability to control, ownership, and family or business association. Past exercise or influences of control need to be shown, only the potential or ability to directly or indirectly exercise influence or control."

DSS rate setting regulations limit the amount of the related party's allowable cost. That limitation is contained in the DSS rate setting regulations section 17-313-5. That definition is: "Whatever costs are incurred between related parties, allowable cost shall be defined as and limited to the cost to the related party. Findings of relatedness may be made in the absence of majority stock ownership of the related parties in respective organizations. The related party principle applies to any transaction between a provider

and a related party, including but not limited to, one-time or multiple transactions involving services or supplies and one-time sales or lease of the facility itself. Related party transactions must be identified as such in the ACOR and the unallowable portion excluded in the appropriate section of this ACOR.”

In applying the related party definition to determine the existence of a related party transaction, the ability to control and the level of authority in the decision-making process that results in the transaction will be the criteria to determine applicability to this ethics protocol. If the person who has the ability to authorize the transaction on behalf of the Independent Contractor/Consultant meets the related party definition with respect to the subcontractor providing the goods or services, then the transaction falls under this ethics protocol.

**Related Party Transaction:**

Any transaction between a related party as defined in the DSS regulations, above, and an Independent Contractor/Consultant contracting with the Department of Mental Retardation.

**State Ethics Commission:**

Seven-member citizen commission charged with the responsibility to interpret and enforce, among other things, Code of Ethics for Public Officials, Conn. Gen. Stat. 1-79 et seq. Commission’s jurisdiction includes Conn. Gen. Stat. 1-86e.

### **III. Process**

**A. DMR Ethics Committee for Independent Contractor/Consultant**

The DMR Ethics Committee for Independent Contractor/Consultant is responsible to review and approve or disapprove submissions regarding State Ethics Commission Advisory Opinions 99-14, 99-15 and 99-19.

This committee meets on a monthly basis. A simple majority of the committee constitutes a quorum for a meeting. Decisions will be rendered by a simple majority vote.

This committee consists of the following people:

- ❖ Operations Center Director, Chairperson
- ❖ Rotating Administrative representative from a region
- ❖ Director of DMR Internal Audit
- ❖ DMR Legal Counsel
- ❖ A DMR Central Office Human Resources Department representative
- ❖ A DSS representative (for issues related to its authority)

Using the parameters defined in this protocol, an Independent Contractor/Consultant submits the required information, as indicated, to the DMR Ethics Committee for Independent Contractor/Consultants. The DMR Ethics Committee for Independent Contractor/Consultants will review these submissions at its monthly meeting for approval or disapproval. The committee reserves the right to request further information. The

Independent Contractor/Consultant may have an opportunity to be heard while his/her submission is being reviewed.

The DMR Ethics Committee for Independent Contractor/Consultant will render a decision within 45 days from the receipt of the request. The DMR Ethics Committee for Independent Contractor/Consultant will provide a written notice of the decision within five (5) working days of the meeting at which the decision was rendered.

If the DMR Ethics Committee for Independent Contractor/Consultant needs clarification of ethics statutes or advisory opinions, it will communicate with the State Ethics Commission for advice.

**B. The Hiring Of Relatives By Independent Contractors And Their Staff:**

**In the following instances, prior approval is required if the Independent Contractor/Consultant contemplates:**

1. Hiring an immediate family of a Board member as Executive Director/CEO/President of agency, or
2. Hiring an immediate family member, or the immediate family member of the Executive Director/CEO/President of the agency into an exempt employee position at the agency.

**In the following instances, post hiring review/approval is required:**

If any immediate family member of any current employee is hired, notification will be sent to the DMR Ethics Committee for Independent Contractor./Consultant for post review approval or disapproval.

**The DMR Ethics Committee for Independent Contractor/Consultant will use the following criteria when reviewing the Independent/ Contractor/Consultant's request:**

The immediate family member is paid comparable compensation and benefits to other employees ( or previous employee) in similar positions (market rate).

The immediate family member meets the qualifications of the job.

**Documentation submitted to DMR:**

1. Title and description of the position
2. Name of person hired
3. Name and position of staff person who was hired first
4. Documentation that the person hired will be paid comparable salary and benefits as other employees (or previous employee) in similar positions
5. Documentation that the immediate family member meets the qualifications for the job
6. In addition to the above, for the prior approval requests; the Independent Contractor/Consultant will submit job postings, documentation on the review and selection process used.

**C. The Acceptance Of Expense Payments To Accompany Department of Mental Retardation Client to Event:** (if payment(s), from an individual or that individual's family, total \$100.00 or more for the year)

**In the following instances, prior approval is required:**

Any event costing over \$2,000.00

**In the following instances, post review/approval is required:**

Any event costing less than \$2,000.00 but more than \$100 (based on C above).

**The following will be the criteria the Committee for Independent Contractor/Consultant will be use when reviewing the Independent Contractor's/Consultant's request:**

1. The event being funded is at the request of the individual or his/her family/guardian/team.
2. The Independent Contractor/Consultant does not have DMR available funding for the individual(s) to attend the event.
3. Staff participating in the event will be funded using the individual's funds, only for necessary expenses. This normally includes their transportation, lodging and reasonable food costs.
4. The payment(s) from an individual or that individual's family total(s) \$100.00 or more for the year to the employee.
5. The individual's team was involved in reviewing the proposed event and a higher-level person than on the team is agreeing with the expenditure.

**Documentation submitted to DMR:**

1. Statement from the Independent Contractor/Consultant that it does not have or anticipate not having DMR funding available for the event.
2. Documentation that the individual ad/or his/her family is requesting participation in the event.
3. Documentation on the amount and use of funds (e.g., travel, lodging, and reasonable food costs) the individual will pay
4. Documentation that a higher level person, other than the staff going on the event and the team, is agreeing to the need to go on the event and use of individual's/family's funds.

If the above criteria are not met, the DMR Ethics Committee for Independent Contractor/Consultant may notify the appropriate region to disallow the expenditure and will seek restitution for the individual and/or his/her family.



**D. Independent Contractor/Consultant Use Of State Funds To Benefit Related Party  
(Related Party Transactions to Be Funded By DMR and/or DSS)**

**In the following instances, post review/approval is required:**

**Related party transactions less than \$2,500:**

Any related party transaction to be funded by the Department of Mental Retardation or the Department of Social Services that is less than \$2,500 does not require prior approval by the DMR Ethics Committee for Independent Contractor/Consultant. These transactions can be entered into without prior approval, but must be reviewed by the DMR Ethics Committee for Independent Contractor/Consultant in accordance with the requirements contained in the section following transactions \$2,500 or more. In addition, these transactions must be disclosed on ACORs, CORs and financial statements and on any cost reporting to the Departments of Mental Retardation and/or Social Services. These transactions remain subject to review and subject to the regulatory requirement that the allowable cost will be the related party's actual cost.

To the extent reviews by the DMR Ethics Committee for Independent Contractor/Consultant, or reviews/audits conducted by DMR or DSS determine a related party transaction does not comply with the related party criteria for allowability, disallowances and recoveries will be made for the unallowable portion of the related party transaction.

**In the following instances, prior approval is required:**

**Related party transactions \$2,500 or more:**

Any related party transaction to be funded by the Department of Mental Retardation or the Department of Social Services that are \$2,500 or more will require prior approval by the DMR Ethics Committee for Independent Contractor/Consultant. In addition, these transaction must be disclosed on ACORs, CORs, and financial statements and on any cost reporting to the Departments of Mental Retardation and/or Social Services. These transactions remain subject to review and subject to the regulatory requirement that the allowable cost will be the related party's actual cost.

In order to obtain approval, based upon the state ethics codes, Independent Contractors/Consultant proposing the related party transactions must provide the DMR Ethics Committee for Independent Contractor/Consultant with a written proposal that identifies the information in the following section.

**The information that must be submitted is:**

1. A narrative statement that describes the purpose of the proposed related party transaction(s). Specifically, the proposal must identify the specific services that are to be rendered, and/or the specific property or equipment that is to be purchased or leased from a related party. An identification of **ALL** related parties (individuals and/or organizations) must be disclosed and which must

indicate the nature of the relationship that results in a related party defined by the Rate Setting Regulation.

2. The proposal must include a copy of the related party's proposed contract and/or the sale or lease document evidencing the transaction. This documentation must identify the amount of the charges for specific services or items subject to the related party transaction. This documentation must be reviewed by the department to determine if the terms and conditions of the transaction are reasonable and appropriate for the types of services or commodities being contracted for, or property/equipment being leased or purchased. Determinations of reasonable and appropriate terms and conditions may require additional research and consultations with the Attorney General's Office, and/or other arms-length providers of similar services. All related party transactions must be formalized by contracts, agreements, leases that are signed by all parties involved in the transaction.
3. The necessity of the related party transaction(s) must be articulated in the proposal submitted for the DMR Ethics Committee for Independent Contractor/Consultant' review. The proposal must clearly establish why the Independent Contractor/Consultant must enter into this specific related party transaction vs. having the services or commodities of the transaction provided by an arms-length organization. The fundamental question that must be answered is the benefit of the proposed transaction to the Independent Contractor/Consultant and ultimately the benefit to the State of Connecticut, a funding source of the related party transaction.
4. The proposal must establish the qualifications of the proposed vendor(s) and/or the individual(s) that will perform the services identified in this proposal. This included establishing the qualifications of any/all subcontractors that will perform any part of the services to be rendered under the proposed related party transaction.
5. The proposal must describe, and the Independent Contractor/Consultant proposing the related party transaction must document, that there was an open competitive bidding process for whatever services, property or equipment leases that are to be provided under this proposed related party transaction for transactions that exceed \$2,500. The Independent Contractor/Consultant proposing the related party transaction must document that bidders are qualified, competent vendors who can perform the proposed services. Requests for bids, and the bids received must be submitted with the proposal along with the names and addresses of the contact person for each bidder.

For transactions less than \$2,500, Independent Contractor/Consultant must document that the amount of the transaction is based upon a reasonable charge that does not exceed the related party's costs.

If a related party transaction is proposed because the related party is "uniquely qualified," the uniqueness of the related party's qualifications must be fully documented.

6. The proposal must document how related party charges and fees will be controlled by the Independent Contractor/Consultant, contracting with the State of Connecticut. The Independent Contractor/Consultant funded by the State must show how it will independently determine and document that services being billed under the related party contracts and agreements have been rendered to the full satisfaction of the Independent Contractor/Consultant in accordance with the terms and requirements of the contract. The Independent Contractor/Consultant funded by the State must document that controls are in place that billings do not exceed the amount of services contracted for via the service agreement. Overall, the Independent Contractor/Consultant requesting the approval of related party transactions must document how that Independent Contractor/Consultant will independently control the transaction to assure the related party Independent Contractor/Consultant cannot use its ability to control to benefit from higher levels of billings than allowed under the applicable agreements. The Independent Contractor/Consultant must demonstrate it has the independent authority to terminate the related party transaction should termination be required for any reason. All proposed related party contracts must have termination clauses that will allow termination with thirty (30) day notice, without cause, by either party.
7. The Independent Contractor/Consultant requesting the related party transaction must assure and demonstrate that charges from the related party will be based upon the related party's actual cost. This must include a provision in the contracts/leases between the related parties that charges are based upon the related party's cost. In addition, the related party must acknowledge in the contract/lease that these charges are subject to review and audit by the State of Connecticut, and that the related party Independent Contractor/Consultant will make all accounting records, ledgers, and all other supporting documentation applicable to the transactions available in Connecticut for review by the State.
8. If the decision by DMR Ethics Committee for Independent Contractor/Consultant is to approve the related party transaction, the Independent Contractor/Consultant will submit documents to the DMR Ethics Committee for Independent Contractor/Consultant, on an annual basis, to show that the related party transaction is within the guide line set by the DMR Ethics Committee for Independent Contractor/Consultant' approval. If there is a discrepancy, the Independent Contractor/Consultant will make adjustments. If adjustments are not made, the Ethics Commission will be notified of the situation by the regional office. If dissatisfied with the decision, the requesting party may, at any time, seek advice/opinion from the State Ethics Commission.
9. The review and approval of any related party transaction by the DMR Ethics Committee for Independent Contractor/Consultant does not limit or preclude the Department of Mental Retardation or the Department of Social Services from conducting any form of audit or post review of related party transactions approved by the DMR Ethics Committee. Additional, rate setting regulations and contract requirements that limit the allowable cost of a related party (and its definition) transaction to the related party's actual costs still prevail over transactions approved by the DMR Ethics Committee.

**E. Post DMR Ethics Committee for Independent Contractor/Consultant Decision:**

If the DMR Ethics Committee for Independent Contractor/Consultant does not approve the submission of the Independent Contractor/Consultant, then Independent Contractor/Consultant may:

- a. Bring submission into compliance as indicated by the Committee, or
- b. Submit a request to the State Ethics Commission for clarification.

If the Independent Contractor/Consultant continues to implement or does not take action to bring the submission into compliance, the DMR Ethics Committee for Independent Contractor/Consultant will refer the matter to the State Ethics Commission, and to the appropriate region, for further action.

It is incumbent upon any Independent Contractor/Consultant that contemplates a substantial change in any arrangement previously approved by the DMR Ethics Committee for Independent Contractor/Consultant (e.g. the immediate relative hired is given a greater increase than comparable staff, related party transaction is adjusted to benefit of related party vendor) to inform the DMR Ethics Committee of that change.

The above processes do not preclude any Independent Contractor/Consultant from seeking a review from the State Ethics Commission. Any such requests and subsequent responses for the State Ethics Commission will be shared with the DMR Ethics Committee for Independent Contractor/Consultant.

## **Section 2**

### **Reference Information**

**A. State Statutes**

**B. Ethics Advisory Opinions**

**C. Other Correspondence**

## **A. State Statutes**

1-86e     Consultants and Independent Contractors  
            Prohibited Activities

1-79       Code of Ethics for Public Officials Definitions

1-81-27   Gifts to the State

1-84       Code of Ethics, Prohibited Activities

17-313b(19) Related Parties Definition

**Sec. 1-86e. Consultants and independent contractors. Prohibited activities.** (a) No person hired by the state as a consultant or independent contractor shall:

(1) Use the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person or a member of the immediate family of any such person or employee;

(2) Accept another state contract which would impair the independent judgment of the person in the performance of the existing contract; or

(3) Accept anything of value based on an understanding that the actions of the person on behalf of the state would be influenced.

(b) No person shall give anything of value to a person hired by the state as a consultant or independent contractor based on an understanding that the actions of the consultant or independent contractor on behalf of the state would be influenced.

(June 12 Sp. Sess. P.A. 91-1, S. 7.)

**Sec. 1-79. Definitions.** The following terms, when used in this part, shall have the following meanings unless the context otherwise requires:

(a) "Blind trust" means a trust established by a public official or state employee or member of his immediate family for the purpose of divestiture of all control and knowledge of assets.

(b) "Business with which he is associated" means any sole proprietorship, partnership, firm, corporation, trust or other entity through which business for profit or not for profit is conducted in which the public official or state employee or member of his immediate family is a director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class, provided, a public official or state employee, or member of his immediate family, shall not be deemed to be associated with a not for profit entity solely by virtue of the fact that the public official or state employee or member of his immediate family is an unpaid director or officer of the not for profit entity. "Officer" refers only to the president, executive or senior vice president or treasurer of such business.

(c) "Candidate for public office" means any individual who has filed a declaration of candidacy or a petition to appear on the ballot for election as a public official, or who has raised or expended money in furtherance of such candidacy, or who has been nominated for appointment to serve as a public official, but shall not include a candidate for the office of senator or representative in Congress.

(d) "Commission" means the State Ethics Commission established in section 1-80.

(e) "Gift" means anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return. "Gift" shall not include:

(1) A political contribution otherwise reported as required by law or a donation or payment as described in subdivision (9) or (10) of subsection (b) of section 9-333b;

(2) Services provided by persons volunteering their time;

(3) A commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;

(4) A gift received from (A) an individual's spouse, fiancé or fiancée, (B) the parent, brother or sister of such spouse or such individual, or (C) the child of such individual or the spouse of such child;

(5) Goods or services (A) which are provided to the state (i) for use on state property, or (ii) to support an event or the participation by a public official or state employee at an event, and (B) which facilitate state action or functions. As used in this subdivision, "state property" means (i) property owned by the state, or (ii) property leased to an agency in the Executive or Judicial Department of the state;

(6) A certificate, plaque or other ceremonial award costing less than one hundred dollars;

(7) A rebate, discount or promotional item available to the general public;

(8) Printed or recorded informational material germane to state action or functions;

(9) Food or beverage or both, costing less than fifty dollars in the aggregate per recipient in a calendar year, and consumed on an occasion or occasions at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance;



(10) Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed legislative reception to which all members of the General Assembly are invited and which is hosted not more than once in any calendar year by a lobbyist or business organization. For the purposes of such limit, (A) a reception hosted by a lobbyist who is an individual shall be deemed to have also been hosted by the business organization which he owns or is employed by, and (B) a reception hosted by a business organization shall be deemed to have also been hosted by all owners and employees of the business organization who are lobbyists. In making the calculation for the purposes of such fifty-dollar limit, the donor shall divide the amount spent on food and beverage by the number of persons whom the donor reasonably expects to attend the reception;

(11) Food or beverage or both, costing less than fifty dollars per person and consumed at a publicly noticed reception to which all members of the General Assembly from a region of the state are invited and which is hosted not more than once in any calendar year by a lobbyist or business organization. For the purposes of such limit, (A) a reception hosted by a lobbyist who is an individual shall be deemed to have also been hosted by the business organization which he owns or is employed by, and (B) a reception hosted by a business organization shall be deemed to have also been hosted by all owners and employees of the business organization who are lobbyists. In making the calculation for the purposes of such fifty-dollar limit, the donor shall divide the amount spent on food and beverage by the number of persons whom the donor reasonably expects to attend the reception. As used in this subdivision, "region of the state" means the established geographic service area of the organization hosting the reception;

(12) A gift, including but not limited to, food or beverage or both, provided by an individual for the celebration of a major life event;

(13) Gifts costing less than one hundred dollars in the aggregate or food or beverage provided at a hospitality suite at a meeting or conference of an interstate legislative association, by a person who is not a registrant or is not doing business with the state of Connecticut;

(14) Admission to a charitable or civic event, including food and beverage provided at such event, but excluding lodging or travel expenses, at which a public official or state employee participates in his official capacity, provided such admission is provided by the primary sponsoring entity;

(15) Anything of value provided by an employer of (A) a public official, (B) a state employee, or (C) a spouse of a public official or state employee, to such official, employee or spouse, provided such benefits are customarily and ordinarily provided to others in similar circumstances; or

(16) Anything having a value of not more than ten dollars, provided the aggregate value of all things provided by a donor to a recipient under this subdivision in any calendar year shall not exceed fifty dollars.

(f) "Immediate family" means any spouse, children or dependent relatives who reside in the individual's household.

(g) "Individual" means a natural person.

(h) "Member of an advisory board" means any individual (1) appointed by a public official as an advisor or consultant or member of a committee, commission or council established to advise, recommend or consult with a public official or branch of government or committee thereof, (2) who receives no public funds other than per diem payments or reimbursement for his actual and necessary expenses incurred in the performance of his official duties, and (3) who has no authority to expend any public funds or to exercise the power of the state.

(i) "Person" means an individual, sole proprietorship, trust, corporation, limited liability company, union, association, firm, partnership, committee, club or other organization or group of persons.

(j) "Political contribution" has the same meaning as in section 9-333b except that for purposes of this part, the provisions of subsection (b) of that section shall not apply.

(k) "Public official" means any state-wide elected officer, any member or member-elect of the General Assembly, any person appointed to any office of the legislative, judicial or executive branch of state government by the Governor or an appointee of the Governor, with or without the advice and consent of the General Assembly, any public member or representative of the teachers' unions or state employees' unions appointed to the Investment Advisory Council pursuant to subsection (a) of section 3-13b, any person appointed or elected by the General Assembly or by any member of either house thereof, and any member or director of a quasi-public agency, but shall not include a member of an advisory board, a judge of any court either elected or appointed or a senator or representative in Congress.

(l) "Quasi-public agency" means the Connecticut Development Authority, Connecticut Innovations, Incorporated, Connecticut Health and Education Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Lower Fairfield County Convention Center Authority, Capital City Economic Development Authority and Connecticut Lottery Corporation.

(m) "State employee" means any employee in the executive, legislative or judicial branch of state government, whether in the classified or unclassified service and whether full or part-time, and any employee of a quasi-public agency, but shall not include a judge of any court, either elected or appointed.

(n) "Trust" means a trust in which any public official or state employee or member of his immediate family has a present or future interest which exceeds ten per cent of the value of the trust or exceeds fifty thousand dollars, whichever is less, but shall not include blind trusts.

(o) "Business organization" means a sole proprietorship, corporation, limited liability company, association, firm or partnership, other than a client lobbyist, which is owned by, or employs, one or more individual lobbyists.

(p) "Client lobbyist" means a person on behalf of whom lobbying takes place and who makes expenditures for lobbying and in furtherance of lobbying.

(q) "Necessary expenses" means a public official's or state employee's expenses for an article, appearance or speech or for participation at an event, in his official capacity, which shall be limited to necessary travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees.

(r) "Lobbyist" and "registrant" shall be construed as defined in section 1-91.

(s) "Legal defense fund" means a fund established for the payment of legal expenses of a public official or state employee incurred as a result of defending himself or herself in an administrative, civil, criminal or constitutional proceeding concerning matters related to the official's or employee's service or employment with the state or a quasi-public agency.

(P.A. 77-600, S. 1, 15; 77-605, S. 14, 21; P.A. 79-493, S. 1, 9; P.A. 81-395, S. 6, 9; P.A. 82-423, S. 1, 8; P.A. 83-249, S. 1, 14; P.A. 84-335, S. 1, 4; P.A. 86-99, S. 29, 34; P.A. 88-139, S. 1; 88-225, S. 1, 14; P.A. 89-245, S. 1; 89-360, S. 8, 45; 89-369, S. 1; June Sp. Sess. P.A. 91-8, S. 54, 63; June 12 Sp. Sess. P.A. 91-1, S. 1, 20, 22; P.A. 92-149, S. 7, 12; P.A. 93-413, S. 13, 16; P.A. 95-79, S. 3, 4, 189; June 18 Sp.

Sess. P.A. 97-5, S. 17, 19; June 18 Sp. Sess. P.A. 97-6, S. 1, 14; P.A. 98-179, S. 13, 30; P.A. 99-56; P.A. 00-43, S. 16, 19; 00-99, S. 13, 154; P.A. 01-143, S. 4, 8; P.A. 04-143, S. 23; 04-198, S. 2, 6.)

History: P.A. 77-605 redefined "political contribution"; P.A. 79-493 redefined "candidate for public office", "gift", "immediate family", "member of an advisory board" and "public official" and included treasurers as officers of businesses in Subdiv. (a); P.A. 81-395 substituted reference to Sec. 9-335(18) for reference to Sec. 9-348q(a) in Subdiv. (i); P.A. 82-423 amended Subdiv. (d) to change food and beverage exception from under twenty-five dollars to under fifty dollars; P.A. 83-249 amended Subdiv. (i) to broaden the definition of "political contribution"; P.A. 84-335 amended Subdiv. (j) to include sheriffs and deputy sheriffs in definition of "public official"; P.A. 86-99 amended definition of "political contribution" to reflect technical changes made in chapter 150; P.A. 88-139 added definitions of "blind trust" and "trust", redefined "business with which he is associated" to include references to sole proprietorships, firms, corporations, trusts and other profit or nonprofit entities, and redefined "person" to include sole proprietorships and trusts, relettering Subdivs. as necessary; P.A. 88-225 included "any member or director of a quasi-public agency" in definition of "public official", included "any employee of a quasi-public agency" in definition of "state employee" and inserted new Subdiv. defining "quasi-public agency", relettering former Subdivs. as necessary; P.A. 89-245 amended the definition of "quasi-public agency" in Subdiv. (l) to rename Connecticut Product Development Corporation as Connecticut Innovations, Incorporated; P.A. 89-360 redefined "quasi-public agency" to include the New Haven Family Alliance; P.A. 89-369 limited exception in definition of "gift" for food or beverage costing less than fifty dollars per person and consumed on a single occasion to an occasion "at which the person paying, directly or indirectly, for the food or beverage, or his representative, is in attendance"; June Sp. Sess. P.A. 91-8 deleted reference to New Haven Family Alliance in definition of "quasi-public agency"; June 12 Sp. Sess. P.A. 91-1 added exception to definition of "business with which he is associated" in Subdiv. (b), substantially amended definition of "gift" and exceptions to "gift" in Subdiv. (e), redefined "quasi-public agency" in Subdiv. (l) by adding Lower Fairfield County Convention Center Authority and Connecticut Convention Center Authority, and added Subdivs. (o) to (r), inclusive, defining "business organization", "client lobbyist", "necessary expenses" and "lobbyist" and "registrant"; P.A. 92-149 redefined "client lobbyist"; P.A. 93-413 included Connecticut Coastline Port Authority in definition of "quasi-public agency" in Subdiv. (l), effective July 1, 1993; P.A. 95-79 redefined "person" and "business organization" to include a limited liability company, effective May 31, 1995; June 18 Sp. Sess. P.A. 97-5 amended Subsec. (e)(1) by changing Sec. 9-333b(b) Subdiv. reference from (11) to (10), effective July 1, 1997, and applicable to elections and primaries held on or after January 1, 1998; June 18 Sp. Sess. P.A. 97-6 amended Subsec. (e) by expanding Subdiv. (5), by changing limit to fifty dollars in Subdiv. (9), inserting new Subdiv. (11) re food or beverage consumed at a publicly noticed reception, adding new Subdiv. (14) re admission to charitable or civic event, adding new Subdiv. (15) re anything of value provided by employer and adding new Subdiv. (16) re anything of value of not more than ten dollars, effective January 1, 1998 (Revisor's note: In Subdiv. (11) of Subsec. (e) a hyphen between "publicly" and "noticed" was deleted editorially by the Revisors for consistency with customary statutory usage); P.A. 98-179 amended Subsec. (l), defining "quasi-public agency", by deleting the Connecticut Convention Center Authority and adding the Capital City Economic Development Authority, effective June 1, 1998; P.A. 99-56 amended Subsec. (k) by adding an appointee of the Governor to the definition of "public official"; P.A. 00-43 amended Subsec. (k) to include members of the Investment Advisory Council as "public officials", effective May 3, 2000; P.A. 00-99 deleted reference to sheriff and deputy sheriff in Subsec. (k), effective December 1, 2000; P.A. 01-143 amended Subsec. (l) by changing Connecticut Coastline Port Authority to Connecticut Port Authority, effective July 6, 2001; P.A. 04-143 redefined "quasi-public agency" in Subsec. (l) to eliminate Connecticut Port Authority from definition, effective July 1, 2004; P.A. 04-198 applied provisions to Sec. 1-86d, made technical changes in Subsecs. (e)(10) and (h) and defined "legal defense fund" in Subsec. (s), effective June 3, 2004, and redefined "quasi-public agency" in Subsec. (l) to include Connecticut Lottery Corporation.

See Sec. 1-79a re calculation of dollar limit on gifts.

**REGULATIONS OF CONNECTICUT STATE AGENCIES**  
**TITLE 1. GENERAL APPLICATION**  
**STATE ETHICS COMMISSION**  
**CODE OF ETHICS**  
**ARTICLE 2. CONFLICT OF INTEREST PROVISIONS SECTIONS 1-84, 1-85, AND 1-86,**  
**GENERAL STATUTES**  
**PART 1. SECTION 1-84, GENERAL STATUTES**

The Connecticut Regulations titles are current with  
material published in Conn.L.J. through 05/30/06.

**Sec. 1-81-27. Gifts to the state**

(a) Nothing in Subsections (j) and (m) of [Section 1-84 of the general statutes](#), which prohibits the acceptance of gifts and nothing in Subsection (c) of [Section 1-84 of the general statutes](#), which prohibits the use of public office or position for personal financial gain shall prohibit the State from accepting gifts of goods and services which facilitate state action or functions, pursuant to subdivision (5) of subsection (e) of [section 1-79 of the general statutes](#).

(b) Whenever a gift to the State incidentally benefits a public official or state employee (e.g., a regulated entity paying the cost for a state regulatory employee to take a course relevant to his or her area of official expertise) the individual's superior shall certify, in writing, to the Ethics Commission, prior to acceptance of the benefit, that the gift, in fact, facilitates state action or functions, complies with the requirements of subdivision (5) of subsection (e) of [section 1-79 of the general statutes](#), and is sanctioned by the recipient agency, notwithstanding any potential conflict of interest. Such certification shall be required only when:

(1) the donor is an individual or entity regulated by, doing business with, or seeking to do business with the recipient agency; and

(2) the total benefit to the public official or state employee is fifty dollars or more.

(c) The certification procedure set forth in subsection (b) of this section shall be utilized only when the necessary expense disclosure procedure mandated by [§ 1-84\(k\) of the general statutes](#) is not applicable.

(Effective June 16, 1993; Amended effective March 3, 1998.)

CT ADC § 1-81-27

END OF DOCUMENT

**Sec. 1-84. (Formerly Sec. 1-66). Prohibited activities.** (a) No public official or state employee shall, while serving as such, have any financial interest in, or engage in, any business, employment, transaction or professional activity, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, as defined in section 1-85.

(b) No public official or state employee shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(c) No public official or state employee shall wilfully and knowingly disclose, for financial gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment and no public official or state employee shall use his public office or position or any confidential information received through his holding such public office or position to obtain financial gain for himself, his spouse, child, child's spouse, parent, brother or sister or a business with which he is associated.

(d) No public official or state employee or employee of such public official or state employee shall agree to accept, or be a member or employee of a partnership, association, professional corporation or sole proprietorship which partnership, association, professional corporation or sole proprietorship agrees to accept any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before the Department of Banking, the Claims Commissioner, the Office of Health Care Access, the Insurance Department, the office within the Department of Consumer Protection that carries out the duties and responsibilities of sections 30-2 to 30-68m, inclusive, the Department of Motor Vehicles, the State Insurance and Risk Management Board, the Department of Environmental Protection, the Department of Public Utility Control, the Connecticut Siting Council, the Division of Special Revenue within the Department of Revenue Services, the Gaming Policy Board within the Department of Revenue Services or the Connecticut Real Estate Commission; provided this shall not prohibit any such person from making inquiry for information on behalf of another before any of said commissions or commissioners if no fee or reward is given or promised in consequence thereof. For the purpose of this subsection, partnerships, associations, professional corporations or sole proprietorships refer only to such partnerships, associations, professional corporations or sole proprietorships which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection. Nothing in this subsection shall prohibit any employment, appearing, agreeing to appear or taking action before any municipal board, commission or council. Nothing in this subsection shall be construed as applying (1) to the actions of any teaching or research professional employee of a public institution of higher education if such actions are not in violation of any other provision of this chapter, (2) to the actions of any other professional employee of a public institution of higher education if such actions are not compensated and are not in violation of any other provision of this chapter, (3) to any member of a board or commission who receives no compensation other than per diem payments or reimbursement for actual or necessary expenses, or both, incurred in the performance of the member's duties or (4) to any member or director of a quasi-public agency. Notwithstanding the provisions of this subsection to the contrary, a legislator, an officer of the General Assembly or part-time legislative employee may be or become a member or employee of a firm, partnership, association or professional corporation which represents clients for compensation before agencies listed in this subsection, provided the legislator, officer of the General Assembly or part-time legislative employee shall take no part in any matter involving the agency listed in this subsection and shall not receive compensation from any such matter. Receipt of a previously established salary, not based on the current or anticipated business of the firm, partnership, association or professional corporation involving the agencies listed in this subsection, shall be permitted.

(e) No legislative commissioner or his partners, employees or associates shall represent any person subject to the provisions of part II concerning the promotion of or opposition to legislation before the General Assembly, or accept any employment which includes an agreement or understanding to influence, or which is inconsistent with, the performance of his official duties.

(f) No person shall offer or give to a public official or state employee or candidate for public office or his spouse, his parent, brother, sister or child or spouse of such child or a business with which he is associated, anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official, state employee or candidate for public office would be or had been influenced thereby.

(g) No public official or state employee or candidate for public office shall solicit or accept anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official or state employee or candidate for public office would be or had been influenced thereby.

(h) Nothing in subsection (f) or (g) of this section shall be construed (1) to apply to any promise made in violation of subdivision (6) of section 9-333x or (2) to permit any activity otherwise prohibited in section 53a-147 or 53a-148.

(i) No public official or state employee or member of the official or employee's immediate family or a business with which he is associated shall enter into any contract with the state, valued at one hundred dollars or more, other than a contract of employment as a state employee or pursuant to a court appointment, unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. In no event shall an executive head of an agency, as defined in section 4-166, including a commissioner of a department, or an executive head of a quasi-public agency, as defined in section 1-79, or the executive head's immediate family or a business with which he is associated enter into any contract with that agency or quasi-public agency. Nothing in this subsection shall be construed as applying to any public official who is appointed as a member of the executive branch or as a member or director of a quasi-public agency and who receives no compensation other than per diem payments or reimbursement for actual or necessary expenses, or both, incurred in the performance of the public official's duties unless such public official has authority or control over the subject matter of the contract. Any contract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within one hundred eighty days of the making of the contract.

(j) No public official, state employee or candidate for public office, or a member of any such person's staff or immediate family shall knowingly accept any gift, as defined in subsection (e) of section 1-79, from a person known to be a registrant or anyone known to be acting on behalf of a registrant.

(k) No public official or state employee shall accept a fee or honorarium for an article, appearance or speech, or for participation at an event, in the public official's or state employee's official capacity, provided a public official or state employee may receive payment or reimbursement for necessary expenses for any such activity in his official capacity. If a public official or state employee receives such a payment or reimbursement for lodging or out-of-state travel or both, the official or employee shall, within thirty days, file a report of the payment or reimbursement with the commission, unless the payment or reimbursement is provided by the federal government or another state government. If a public official or state employee does not file such report within such period, either intentionally or due to gross negligence on the public official's or state employee's part, the public official or state employee shall return the payment or reimbursement. If any failure to file such report is not intentional or due to gross negligence on the part of the public official or state employee, the public official or state employee shall not be subject to any penalty under this chapter. When a public official or state employee attends an event

in this state in the public official's or state employee's official capacity and as a principal speaker at such event and receives admission to or food or beverage at such event from the sponsor of the event, such admission or food or beverage shall not be considered a gift and no report shall be required from such official or employee or from the sponsor of the event.

(l) No public official or state employee, or any person acting on behalf of a public official or state employee, shall wilfully and knowingly interfere with, influence, direct or solicit existing or new lobbying contracts, agreements or business relationships for or on behalf of any person.

(m) No public official or state employee shall knowingly accept, directly or indirectly, any gift, as defined in subsection (e) of section 1-79, from any person the official or employee knows or has reason to know: (1) Is doing business with or seeking to do business with the department or agency in which the official or employee is employed; (2) is engaged in activities which are directly regulated by such department or agency; or (3) is prequalified under section 4a-100. No person shall knowingly give, directly or indirectly, any gift or gifts in violation of this provision. For the purposes of this subsection, the exclusion to the term "gift" in subdivision (12) of subsection (e) of section 1-79 for a gift for the celebration of a major life event shall not apply.

(n) (1) As used in this subsection, (A) "investment services" means investment legal services, investment banking services, investment advisory services, underwriting services, financial advisory services or brokerage firm services, and (B) "principal of an investment services firm" means (i) an individual who is a director of or has an ownership interest in an investment services firm, except for an individual who owns less than five per cent of the shares of an investment services firm which is a publicly traded corporation, (ii) an individual who is employed by an investment services firm as president, treasurer, or executive or senior vice president, (iii) an employee of such an investment services firm who has managerial or discretionary responsibilities with respect to any investment services, (iv) the spouse or dependent child of an individual described in this subparagraph, or (v) a political committee established by or on behalf of an individual described in this subparagraph. (2) The State Treasurer shall not pay any compensation, expenses or fees or issue any contract to any firm which provides investment services when (A) a political committee, as defined in section 9-333a, established by such firm, or (B) a principal of the investment services firm has made a contribution, as defined in section 9-333b, to, or solicited contributions on behalf of, any exploratory committee or candidate committee, as defined in section 9-333a, established by the State Treasurer as a candidate for nomination or election to the office of State Treasurer. The State Treasurer shall not pay any compensation, expenses or fees or issue any contract to such firms or principals during the term of office as State Treasurer, including, for an incumbent State Treasurer seeking reelection, any remainder of the current term of office.

(o) Any person who (1) (A) is doing business with or seeking to do business with the department or agency in which a public official or state employee is employed or (B) is engaged in activities which are directly regulated by such department or agency and (2) gives to such public official or state employee anything of value which is subject to the reporting requirements pursuant to subsection (e) of section 1-96 shall, not later than ten days thereafter, give such recipient a written report stating the name of the donor, a description of the item or items given, the value of such items and the cumulative value of all items given to such recipient during that calendar year. The provisions of this subsection shall not apply to a political contribution otherwise reported as required by law.

(1971, P.A. 822, S. 1; P.A. 75-605, S. 20, 27; P.A. 76-302, S. 1, 3; P.A. 77-600, S. 6, 15; 77-604, S. 68, 84; 77-605, S. 13, 21; 77-614, S. 165, 610; P.A. 78-303, S. 37, 136; P.A. 79-404, S. 1, 45; 79-493, S. 5, 7, 9; P.A. 80-482, S. 1, 4, 170, 191, 345, 348; 80-483, S. 2, 186; P.A. 82-423, S. 6, 8; P.A. 83-249, S. 7, 14; 83-586, S. 4, 14; P.A. 87-9, S. 2, 3; 87-234; 87-524, S. 6, 7; P.A. 88-225, S. 3, 14; P.A. 89-369, S. 3; June 12 Sp. Sess. P.A. 91-1, S. 2, 6, 22; P.A. 92-149, S. 1, 12; P.A. 94-69, S. 2, 3; P.A. 95-188, S. 1; 95-195, S. 4, 83; 95-257, S. 39, 58; P.A. 96-11, S. 1, 5; June 18 Sp. Sess. P.A. 97-6, S. 2-5, 14; P.A. 99-51,



S. 1, 9; 99-145, S. 14, 23; P.A. 00-66, S. 2; P.A. 02-130, S. 13; P.A. 03-215, S. 5; June 30 Sp. Sess. P.A. 03-6, S. 146(d); P.A. 04-38, S. 2; 04-169, S. 17; 04-189, S. 1; 04-245, S. 5, 6.)

History: P.A. 75-605 changed "commission on claims" to "claims commissioner"; P.A. 76-302 added Subsec. (e); P.A. 77-600 broadened scope of section regarding prohibited activities and those who are affected by the prohibitions and added Subsecs. (f) to (i), effective January 1, 1978; P.A. 77-604 changed sections referred to in Subsec. (h), effective January 1, 1978; P.A. 77-605 expanded scope of prohibitions in Subsec. (e); in Subsec. (d) P.A. 77-614 changed "liquor control commission" to "division of liquor control within the department of business regulation"; in Subsec. (d) P.A. 78-303 changed "state banking commission" to "banking commissioner", effective January 1, 1979; in 1979 Sec. 1-66 transferred to Sec. 1-84; P.A. 79-404 changed "commission on special revenue" to "division of special revenue" and added the gaming policy board in Subsec. (d); P.A. 79-493 clarified prohibited conduct in Subsec. (d) and excluded members of advisory boards and commissions receiving per diem or reimbursement for expenses from provisions and excluded executive branch officials from provisions of Subsec. (i) except in certain cases; P.A. 80-482 deleted references to business regulation and reflected changes placing special revenue and the gaming policy board within the department of revenue services and creating the banking, insurance, liquor control and public utility control departments; P.A. 80-483 made technical changes; P.A. 82-423 added Subsec. (j) which placed fifty dollar limit on gifts accepted by public officials; P.A. 83-249 limited prohibition to financial interest or gains; P.A. 83-586 amended Subsec. (d) to include appearance or action before commission on hospitals and health care, insurance department, department of public utility control or Connecticut siting council, effective January 9, 1985; (Revisor's note: Pursuant to P.A. 87-9, "banking department" was changed editorially by the Revisors to "department of banking"); P.A. 87-234 amended Subsec. (d) to exempt from provisions of Subsec. (d) actions of teaching or research professional employees of public institutions of higher education, regardless of whether such actions are compensated; P.A. 87-524 added provision in Subsec. (h) that Subsecs. (f) and (g) shall not apply to promise violating Subdiv. (6) of Sec. 9-333x; P.A. 88-225 added Subdiv. (4) to Subsec. (d), exempting members and directors of quasi-public agencies from application of Subsec. (d) and amended Subsec. (i) to exempt certain members and directors of quasi-public agencies from application of Subsec. (i); P.A. 89-369 applied section to sole proprietorships; June 12 Sp. Sess. P.A. 91-1 amended Subsec. (j) by inserting "knowingly" and making a technical change and added Subsec. (k) re fees and honoraria and Subsec. (l) re influence with lobbying contracts, agreements or business relationships; P.A. 92-149 amended Subsec. (d) to allow firms employing legislators or legislative employees to represent clients before specific agencies provided such employee derives no compensation from such representation, amended Subsec. (k) to allow public officials or state employees to receive payment or reimbursements for necessary expenses for lodging, out-of-state travel or both provided a report is filed with the commission and added new Subsec. (m) re acceptance of gifts in excess of fifty dollars; P.A. 94-69 amended Subsec. (m) by deleting "serving in the executive branch or a quasi-public agency" after "state employee", effective January 1, 1994; P.A. 95-188 added Subsec. (n) re contributions to candidates for Treasurer by "investment services" firms or individuals associated with such firms; P.A. 95-195 amended Subsec. (d) to replace reference to Department of Liquor Control with reference to office within the Department of Consumer Protection carrying out the duties of Secs. 30-2 to 30-68m, inclusive, effective July 1, 1995; P.A. 95-257 amended Subsec. (d) to replace Commission on Hospitals and Health Care with Office of Health Care Access, effective July 1, 1995; P.A. 96-11 amended Subsec. (i) to prohibit an executive head of an agency or his immediate family or a business with which he is associated from entering into a contract with that agency, effective January 1, 1997; June 18 Sp. Sess. P.A. 97-6 amended Subsec. (j) to delete reference to gifts of fifty dollars or more in value, amended Subsec. (k) to provide that admission to, and food and beverage consumed at, an event are not considered a gift if consumed at the event, if official or employee attends in official capacity or as principal speaker, amended Subsec. (m) to delete reference to gifts of fifty dollars or more in value and to delete Subdiv. (3) re financial interests that may be substantially affected by performance or nonperformance of duties and added new Subsec. (o) re written reports by person who is doing business with agency and who gives something of value to a public official or employee of that agency, effective January 1, 1998; P.A. 99-51 amended Subsec. (d) to



substitute "State Insurance and Risk Management Board" for "State Insurance Purchasing Board" and to make existing provisions gender neutral, effective May 27, 1999; P.A. 99-145 amended Subsec. (d) to substitute "State Insurance and Risk Management Board" for "State Insurance Purchasing Board", effective June 8, 1999; P.A. 00-66 made technical changes in Subsec. (k); P.A. 02-130 amended Subsec. (n) by designating definitions as Subdiv. (1) and remaining provisions as Subdiv. (2), designating definition of "investment services" in Subdiv. (1) as Subpara. (A) and replacing "legal services" with "investment legal services" therein, adding Subdiv. (1)(B) defining "principal of an investment services firm" and revising Subdiv. (2) to replace former provisions re individual who is owner of firm or employed by firm as manager, officer, director, partner or employee having managerial or discretionary investment responsibilities with "a principal of the investment services firm" and to make conforming and technical changes, effective May 10, 2002; P.A. 03-215 amended Subsec. (m) to add Subdiv. (3) re gifts from a prequalified contractor, effective October 1, 2004; June 30 Sp. Sess. P.A. 03-6 and P.A. 04-169 replaced Department of Consumer Protection with Department of Agriculture and Consumer Protection, effective July 1, 2004; P.A. 04-38 amended Subsec. (i) to increase the number of days by which a lawsuit to void a contract in violation of said Subsec. may be brought from ninety days to one hundred eighty days and to make technical changes, effective July 1, 2004; P.A. 04-189 repealed Sec. 146 of June 30 Sp. Sess. P.A. 03-6, thereby reversing the merger of the Departments of Agriculture and Consumer Protection, effective June 1, 2004; P.A. 04-245 amended Subsec. (m) to provide that, for purposes of said Subsec., exclusion to term "gift" in Sec. 1-79(e)(12) for major life event shall not apply, effective June 1, 2004.

See Sec. 1-79a re calculation of dollar limit on gifts.

Subsec. (c):

Cited. 229 C. 479, 494.

Ethics Commission has jurisdiction in case involving the use of office by state employee for financial gain even if employee's behavior could arguably subject him to discipline by Commissioner of Administrative Services pursuant to State Personnel Act. 53 CA 808.

Not unconstitutionally void for vagueness or overbroad as applied to plaintiff, a high sheriff engaged in fee splitting. 45 CS 242.

**REGULATIONS OF CONNECTICUT STATE AGENCIES**  
**TITLE 17. PUBLIC ASSISTANCE**  
**DEPARTMENT OF MENTAL RETARDATION**  
**ESTABLISHMENTS OF RATES FOR COMMUNITY LIVING ARRANGEMENTS LICENSED**  
**BY THE**

**DEPARTMENT OF MENTAL RETARDATION**

The Connecticut Regulations titles are current with  
material published in Conn.L.J. through 05/30/06.

Sec. 17-313b-1. Definitions

As used in Sections 17-313b-1 to 17-313b-17, inclusive:

- (1) "Commissioner" means the Commissioner of Income Maintenance or his designated representative.
- (2) "Commissioner of Mental Retardation" means said commissioner or his designated representative.
- (3) "Audited consolidated operational report" means the annual cost and performance reporting document, which consists of forms provided by the Department of Mental Retardation, and submitted by all organizations operating community living arrangements or community living arrangements and day services.
- (4) "Operational plan" means the document, which consists of forms provided by the Department of Mental Retardation, and submitted by all organizations operating community living arrangements for use in establishing rates for the following contract year.
- (5) "Community living arrangement" means any residence operated by an organization for mentally retarded persons and licensed pursuant to Section 19a-467 G.S. other than a community training home, group residence, habilitative nursing facility, or residential school. A facility certified to participate in the Medicaid program as an intermediate care facility for the mentally retarded shall not be considered a community living arrangement for purposes of establishing rates pursuant to these regulations.
- (6) "Community Training Home" means a residence licensed as such by the Department of Mental Retardation pursuant to Section 19a-467 G.S.
- (7) "Region" means Department of Mental Retardation region of the state.
- (8) "Primary Region" means that Department of Mental Retardation Region in which an organization has its highest number of community living arrangement placements.
- (9) "Day Services" means the range of non-residential services provided to persons by organizations which receive funding from the state including but not limited to, community work services, adult day treatment, supported employment and elderly enrichment.
- (10) "Organization" means any business entity which operates community living arrangements and/or day services for mentally retarded persons.
- (11) "Client" means a mentally retarded person who receives services funded, or partially funded by the Department of Mental Retardation.
- (12) "Contract Year" means the period of July 1 through June 30.

(13) "Contract" means the written agreement between the Department of Mental Retardation and an organization to provide services during the contract year.

(14) "Residential Client Needs Assessment" means documents which present a composite assessment of individual client needs for each community living arrangement to assist in establishing the basic staffing pattern required in the residence. The forms and assessment are provided by the Department of Mental Retardation.

(15) "Newly Licensed Community Living Arrangement" means any community living arrangement operated by an organization that has been licensed for less than twelve (12) months and which has not had a rate established pursuant to Sec. 17-313b-8.

(16) "Line Item" means the categories of expenditures, administrative and general, direct service staff compensation, direct service costs other than direct service staff compensation, and room and board costs, used in the rate setting process established by these regulations.

(17) "Line Item Cost Settlement" means the cost settlement process for the expenditure categories recognized in these regulations.

(18) "Multi-Unit Structure" means any residential building in which more than one unit is leased or offered for lease.

(19) "Related Parties" means persons or organizations related through marriage, ability to control, ownership, family or business association. Past exercise or influence or control need not be shown, only the potential or ability to directly or indirectly exercise influence or control.

(Effective June 24, 1988.)

CT ADC § 17-313b-1

END OF DOCUMENT

**REGULATIONS OF CONNECTICUT STATE AGENCIES**  
**TITLE 17. PUBLIC ASSISTANCE**  
**DEPARTMENT OF MENTAL RETARDATION**  
**ESTABLISHMENTS OF RATES FOR COMMUNITY LIVING ARRANGEMENTS LICENSED**  
**BY THE**  
**DEPARTMENT OF MENTAL RETARDATION**  
The Connecticut Regulations titles are current with  
material published in Conn.L.J. through 05/30/06.

Sec. 17-313b-3. Filing of audited consolidated operational report (ACOR)

Each private organization operating community living arrangements or community living arrangements and day services shall annually file an audited consolidated operational report with the primary regional office of the Department of Mental Retardation.

(1) The ACOR shall be filed no later than the first business day following October 15 for the contract year July 1 through June 30.

(2) The ACOR shall provide actual audited costs, revenues, and client data for the preceding contract year July 1 through June 30.

(3) Forms and specific expense and revenue categories shall be provided by the Department of Mental Retardation in order to assure that all data supplied by the filing organizations is consistent in format and content to facilitate comparison statewide.

(4) The ACOR shall be completed in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards. Audited financial statements, notes to same and the auditor's opinion letter shall accompany the ACOR filing.

(5) Whenever costs are incurred between related parties, allowable cost shall be defined as and limited to the cost to the related party. Findings of relatedness may be made in the absence of majority stock ownership of the related parties in respective organizations. The related party principle applies to any transaction between a provider and a related party, including but not limited to one time or multiple transactions involving services or supplies and one time sales or lease of the facility itself. Related party transactions must be identified as such in the ACOR and the unallowable portion excluded in the appropriate section of the ACOR.

(Effective June 24, 1988.)  
CT ADC § 17-313b-3  
END OF DOCUMENT

**Sec. 17b-243. (Formerly Sec. 17-313a). Payments to rehabilitation centers.** (a) The rate to be paid by the state to rehabilitation centers, including but not limited to, centers affiliated with the Easter Seal Society of Connecticut, Inc., for services to patients referred by any state agency, except employment opportunities and day services, as defined in section 17a-246, shall be determined annually by the Commissioner of Social Services who shall prescribe uniform forms on which such rehabilitation centers shall report their costs, except that rates effective April 30, 1989, shall remain in effect through May 31, 1990, and rates in effect February 1, 1991, shall remain in effect through December 31, 1992, except those which would be decreased effective January 1, 1992, shall be decreased. For the rate years beginning January 1, 1993, through December 31, 1995, any rate increase shall not exceed the most recent annual increase in the consumer price index for urban consumers. Such rates shall be determined on the basis of a reasonable payment for necessary services rendered. Nothing contained herein shall authorize a payment by the state to any such rehabilitation center in excess of the charges made by such center for comparable services to the general public. The Commissioner of Social Services shall establish a fee schedule for rehabilitation services to be effective on and after January 1, 1996. The fee schedule may be adjusted annually beginning July 1, 1997, to reflect necessary increases in the cost of services.

(b) The amount to be paid by the state to rehabilitation centers including but not limited to centers affiliated with the Easter Seal Society of Connecticut, Inc., for employment opportunities and day services to patients referred by any state agency shall be determined annually using a uniform payment system in accordance with the provisions of subsection (a) of section 17a-246.

(1969, P.A. 346, S. 1; P.A. 73-117, S. 25, 31; P.A. 79-560, S. 27, 39; P.A. 80-483, S. 174, 186; P.A. 89-325, S. 13, 26; June Sp. Sess. P.A. 91-8, S. 14, 63; May Sp. Sess. P.A. 92-16, S. 27, 89; P.A. 93-262, S. 1, 87; 93-418, S. 25, 41; P.A. 95-160, S. 66, 69; P.A. 96-139, S. 12, 13.)

**History:** P.A. 73-117 replaced hospital cost commission with committee established under Sec. 17-311; P.A. 79-560 replaced the committee with commissioner of income maintenance; P.A. 80-483 deleted "for Crippled Children and Adults" in Easter Seal Society name; P.A. 89-325 amended Subsec. (a) to exclude centers that provide employment opportunities and day services from the rate setting in this section, it also allows rates effective April 30, 1989, to remain in effect through May 31, 1990, and added a new Subsec. (b) re rates for centers providing employment opportunities and day services; June Sp. Sess. P.A. 91-8 amended Subsec. (a) re rates paid by the state for rehabilitation centers; May Sp. Sess. P.A. 92-16 amended Subsec. (a) by providing that for the rate year beginning January 1, 1993, any rate increase shall not exceed the most recent annual increase in the consumer price index for urban consumers. P.A. 93-262 authorized substitution of commissioner and department of social services for commissioner and department of income maintenance, effective July 1, 1993; P.A. 93-418 amended Subsec. (a) concerning rate increases and the consumer price index to specify applicability for any succeeding rate year after January 1, 1993, effective July 1, 1993; Sec. 17-313a transferred to Sec. 17b-243 in 1995; P.A. 95-160 amended Subsec. (a) by replacing "any succeeding year" with "December 31, 1995" for the period of time after January 1, 1993, which shall not have a rate increase exceeding the most recent annual increase in the consumer price index for urban consumers and by adding a provision requiring the commissioner to establish a fee schedule for rehabilitation services to be effective on and after January 1, 1996, effective June 1, 1995; P.A. 96-139 changed effective date of P.A. 95-160 but without affecting this section.

## **B. Related Advisory Opinions**

### **Titles**

- |       |  |
|-------|--|
| 97-22 | Application of the Independent Contractor Section of the Code of Ethics Connecticut General Statutes 1-86e to a private entity contracting with the Department of Mental Retardation |
| 98-9  | Application of the Code of Ethics to gifts by the University of Connecticut to public officials from another State entity  |
| 98-30 | Application of Connecticut General Statutes 1-84c to State employee named as beneficiary or executrix(or) under client's will  |
| 99-13 | Application of Independent Contractor Ethics Rules, Connecticut General Statute 1-86e, to Families and Consumers receiving direct funding from the Department of Mental Retardation  |
| 99-14 | Application of Connecticut General Statute 1-86e to Hiring of Relatives by Independent Contractors and their staff   |
| 99-15 | Application of Ethics Rules to Acceptance of Expenses to accompany Department of Mental Retardation clients to events  |
| 99-17 | Application of Gift Restrictions to employees of private agencies under contract with the Department of Mental Retardation   |
| 99-19 | Application of Connecticut General Statutes 1-86e to independent contractors' use of State funds to benefit related party.   |



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### Advisory Opinion No. 97-22

Application of the Independent Contractor Section of the Code of Ethics,  
Conn. Gen. Stat. §1-86e, to a Private Provider Contracting With  
the Department of Mental Retardation

Barbara Langevin, a contract manager at the Department of Mental Retardation ("DMR"), has asked how the Code of Ethics for Public Officials, Conn. Gen. Stat. §1-79 et seq., applies to a private provider who contracts with DMR to provide services to several of the agency's clients. Specifically, the provider in question, Wings of Windham ("Wings"), is a subchapter S corporation run exclusively by a husband and wife. Under contract with DMR, Wings provides support services to several individuals who are DMR clients. One of the clients lives in a house owned by the owners of Wings and pays rent to them. For a time, this same client shared a house with an immediate family member of the owners of Wings. The family member received a small salary and a reduction in the amount of rent which he was expected to pay in exchange for support services to the DMR client. Finally, at least one of the owners of Wings is a current state employee in a different state agency.

Examining this latter fact first, under Conn. Gen. Stat. §1-84(i), any contract worth \$100 or more made between a state employee or a business with which he or she is associated and the State, other than a contract of employment as a state employee, must be made through an open and public process, including prior public offer of the contract and subsequent public disclosure of the contract awarded and the bids received. This means that the contract between Wings and DMR must have been awarded through such an open and public process in order to comply with the Code of Ethics, since at least one of Wing's owners is a state employee. Also, of course, this individual's state job must come first; "outside employment which threatens such priority impermissibly impairs a state employee's independence of judgment." See Office of State Ethics Advisory Opinion No. 94-22, 56 Conn. L. J. 22, p.5D (11/29/94) ("State Employees May Not Accept Outside Employment as Probate Judge").

Secondly, as independent contractors, Wings and its owners are subject to the restrictions of Conn. Gen. Stat. §1-86e. In particular, §1-86e(1) states that no person hired by the state as a consultant or independent contractor shall "use the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person, or a member of the immediate family of any such person or employee." Two of the facts described above raise issues under this section—the rental of property owned by the Wings' owners to the DMR client and the hiring and rent reduction of the immediate family member of the Wings' owners who lived with this DMR client. If the decision to rent to the client and hire the family member were made without DMR knowledge or approval, these actions would appear to violate this section of the Code.

In order to avoid these possible conflicts of interest, the owners of Wings should, before raising these issues (or any other issues involving their financial interests or the financial interests of an immediate family member) with the DMR client, notify DMR in writing of the proposed actions and of the owners' financial and familial connections with the matter. DMR should then approve or disapprove the actions, in writing, before they are presented to the DMR client as a possibility. Such a course of conduct is analogous to the procedure outlined in §1-86(a) for the avoidance of potential conflicts of interests by state employees and public officials.

By order of the Commission,

Maurice FitzMaurice  
Chairperson





# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 98-9

#### Application Of The Code Of Ethics To Gifts Provided By The University Of Connecticut To Public Officials From Another State Entity

On occasion, the University of Connecticut will invite members and staff of the General Assembly to attend one of its athletic or cultural events and a related reception just prior to or following the event. The purpose of the invitation is to have an opportunity to educate the attendees regarding the needs of the University, as well as showcase the diversity of University programs and activities. Ms. Brenda Bergeron, Office of State Ethics Principal Attorney, has asked whether the acceptance of such benefits are permissible, under the Code of Ethics for Public Officials, Chapter 10, Part I, Connecticut General Statutes.

A public official or state employee or member of any such person's staff or immediate family is prohibited from accepting gifts from a person known to be a registrant or anyone acting on behalf of a registrant. Conn. Gen. Stat. § 1-84(j). A registrant means a person who is required to register as a lobbyist, pursuant to the Code of Ethics for Lobbyists, Chapter 10, Part II, Connecticut General Statutes. Conn. Gen. Stat. § 1-79(r), 1-91(q). Public officials, state employees of a branch of state government, or the agency itself are exempt from the requirement to register as a lobbyist. Conn. Gen. Stat. § 1-91(l)(1). In addition, a public official or state employee is prohibited from accepting any gift from any person he or she knows or has reason to know (1) is doing business with the department or agency in which the official or employee is employed or (2) is engaged in activities which are directly regulated by such department or agency. Conn. Gen. Stat. § 1-84(m). Again, this section is not applicable. Therefore, the University and its employees are not amongst the class of restricted donors which are specifically prohibited from giving gifts or other benefits to a member or staff person of the General Assembly.

Regardless of this conclusion, the Commission has previously ruled that it constitutes an inappropriate use of one's official position for personal financial gain, in violation of Conn. Gen. Stat. § 1-84(c), when a public official or state employee receives excessive gifts or other benefits from a non-restricted donor, if the gift or benefit is bestowed solely by virtue of the individual's state position. See, e.g., Advisory Opinion No. 92-5, 53 CLJ 38, p. 9C (3/17/92), wherein the Commission held that the gift limits contained in the Codes would be considered the benchmark for determining what is an excessive non lobbyist expenditure, when the benefit was being given by virtue of the recipient's public position.

A significant factor in the Commission's decision in Advisory Opinion No. 92-5 was that the Codes' gift limit (fifty dollars per recipient per calendar year) and the exceptions to the definition of "Gift" (e.g., one hundred and fifty dollars in food and drink per recipient per calendar year) were sufficient to allow essentially unobjectionable entertainment and benefit passing, even when the motivation for the occasion or transaction was the recipient's state position. Effective

January 1, 1998, however, these thresholds have been lowered to prohibit any gift over ten dollars and to limit food and drink to fifty dollars per recipient per calendar year. June 18 Special Session Public Act No. 97-6, § 1,6.

Given this legislative enactment, the Commission believes it appropriate to review the above articulated § 1-84(c) ban on excessive benefits received by virtue of one's public position. Specifically, the Commission now holds that the mere receipt of a benefit from a non-restricted donor given by virtue of one's office does not necessarily equate to an improper use of public position for financial gain. In the situation under review, for example, while the individuals are, unquestionably, receiving the benefits because of their positions in state government, the event at issue is an officially sanctioned University function held for the stated purpose of providing the legislators and staff with information which will be of assistance in fulfilling their legislative duties. Under these circumstances, the appropriateness of the expenditures should not fall within the purview of the Office of State Ethics. Rather, the desirability of such state disbursements should be determined by the University and reviewed by the Auditors of Public Accounts as to whether or not the expenditures are a proper use of state funds and/or assets.

While the foregoing analysis addresses the question of benefits provided to a public official for a public purpose, it does not extend to such benefits provided to the family or guest of the official; a practice in which UCONN has also engaged. As discussed supra, until this year immediate family of a public official would have been allowed to accept these benefits, e.g., a ticket to a sports or cultural event, even if furnished by a lobbyist. Given the current, essentially absolute, ban on gifts from regulated donors, however, the Commission believes the financial thresholds established by the gift law are no longer an appropriate and sufficient benchmark for limiting benefits provided, by virtue of one's position, from non-regulated benefactors. Alternatively the Commission now adopts the de minimis financial benefits standard set forth in the regulations implementing the Code's conflict of interest provisions. See, Regulations of Conn. State Agencies Sec. 1-81-30(a). Specifically, under this standard, benefits with a cumulative value of less than one hundred dollars per person per year provided to a public official or immediate family member, by virtue of the official's position, by a non-regulated donor will be permitted. Application of this standard will allow modest benefits from non-regulated sources, e.g., the UCONN tickets in question, which would not otherwise fall within one of the Codes' gift exceptions. Conn. Gen. Stat. § 1-79(e)(1)-(16) and 1-91(g)(1)-(16). At the same time, however, the de minimis limitation will prevent the public official from improperly requesting or receiving substantial, and clearly inappropriate, gifts or other benefits by virtue of public position.

By order of the Commission,

Stanley Burdick  
Chairman



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 98-30

#### **Application of Conn. Gen. Stat. §1-84(c) to State Employee Named as Beneficiary or Executrix/or Under Client's Will**

Karen Davies, Director of Human Resources for the Eastern Region of the Department of Mental Retardation ("DMR"), has asked whether the naming of an agency employee as a beneficiary or executrix/or in a client's will constitutes a conflict of interest under the Code of Ethics for Public Officials, Conn. Gen. Stat. §1-79 et seq.

Connecticut General Statutes §1-84(c) prohibits a state employee from using his or her office or position for financial gain. The Office of State Ethics has previously held that an inappropriate use of position exists where, for example, a state employee accepts a tip from a private individual for a job well done. See Advisory Opinion No. 89-20, 51 Conn. Law J. 7, p. 3C (8/15/89). A similar concern is raised with the acceptance of a bequest by a DMR employee from a DMR client (or from a client's relative or friend), where the will was drawn up while the client was subject to the influence, control and/or authority of the state employee. In fact, the potential use of office is even greater where, as here, the decision-making of the DMR client and/or family member or friend may be influenced by the sometimes very personal and emotional issues that can be addressed by the DMR employee in the course of his or her official relationship with the client. This concern is magnified by the potentially vulnerable population with which a DMR employee may work. Therefore, absent a compelling factual situation not addressed by this opinion, and based on the Commission's precedent regarding additional compensation, it is a violation of Conn. Gen. Stat. §1-84(c) for a DMR employee to accept a bequest under a will which was made while the client was under the employee's influence, control and/or authority. Although the same rule would apply even if the employee thereafter retires from state service and subsequently learns of the inheritance, it would not be a violation of the Code of Ethics for a former DMR employee to accept a bequest if the DMR client executed the will after that employee had retired from state service and therefore no longer had official responsibilities with regard to the client.

Turning to the second issue, a DMR employee who is named as the executor or executrix of a will by a client he or she is serving also faces the possibility of personal financial gain. The documentation necessary to settle the estate, including the inventory of the estate, is prepared by the executrix/or, who can claim a fee for the work performed. Under the Code of Ethics, a DMR employee who wishes to accept this responsibility could perform these fiduciary duties on his or her own time, but should accept only out-of-pocket reimbursement of expenses, and should not personally accept a fee from the estate.

By order of the Commission,

Stanley Burdick,  
Chairperson



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 99-13

**Application Of Independent Contractor Ethics Rules, Conn. Gen. Stat. §1-86e,  
To Families And Consumers Receiving Direct Funding From  
Department Of Mental Retardation**

John Houchin, Director of the Eastern Region of the Department of Mental Retardation ("DMR"), has asked whether the restrictions of Conn. Gen. Stat. §1-86e apply to a support and services approach called "Self-Determination." Under this approach, the DMR consumer and/or his or her family have direct control over their DMR funding and may make their own hiring choices regarding who will supply support and services. As a result, for example, other family members may be paid to assist the DMR consumer, or may charge rent to the consumer to live in a family-owned home or condominium.

Individuals and entities hired by the state are subject to the restrictions of Conn. Gen. Stat. §1-86e. Among other provisions, that section states that no person hired by the state as a consultant or independent contractor shall "use the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person, or a member of the immediate family of any such person or employee." Conn. Gen. Stat. §1-86e(a)(1).

In applying these rules to the question asked by Dr. Houchin, the preliminary issue is whether the consumer/family who receives the lump sum funding is an independent contractor or consultant as those terms are used in Conn. Gen. Stat. §1-86e. The introductory language of §1-86e states that that section applies to a person "hired by the state." Here, DMR provides funding to, but does not enter into a services agreement with, the consumer/family. Therefore, the restrictions of §1-86e do not apply to families in the Self-Determination program.

By order of the Commission,

Stanley Burdick,  
Chairperson



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 99-14

#### *Application Of Conn. Gen. Stat. §1-86e To The Hiring Of Relatives By Independent Contractors And Their Staff*

John Houchin, Director of the Eastern Region of the Department of Mental Retardation ("DMR"), has asked how the restrictions of Conn. Gen. Stat. §1-86e apply to private agencies which contract with DMR, and hire family members of the owners or staff as employees or subcontractors. Specifically, DMR wishes to know how the statute applies when such hiring will result in state payment or reimbursement for the services in question, particularly when there has been no competitive bidding process.

Under Conn. Gen. Stat. §1-86e(a)(1), no person hired by the State as a consultant or independent contractor shall "use the authority provided to the person under the contract, to obtain financial gain for the person, an employee of the person, or a member of the immediate family of any such person or employee." "Immediate family" is defined to include an individual's spouse or child, and also includes a dependent relative residing in the individual's household. Conn. Gen. Stat. §1-79(f). The Office of State Ethics has previously considered a similar issue, in Advisory Opinion No. 97-22, 59 Conn. L. J. 30, p.3D (1/20/98). In that opinion, the Commission held that when consultants or independent contractors are faced with decisions involving their financial interests or the financial interests of immediate family members, DMR must be notified in writing of the proposed actions and of the owners' financial and familial connections with the matter. "DMR should then approve or disapprove the actions, in writing, before they are presented to the DMR client as a possibility."

The application of §1-86e to independent contractors and consultants is not intended to interfere with their business, but rather to prevent a private entity from using state money to, for example, hire immediate family members without appropriate oversight from DMR. A conflict of interest exists only if there is a nexus between the facts in question and the state money and authority granted to the independent contractor or consultant by contract. Under this rule, it would not be a conflict of interest for an immediate family member whose employment with the private agency pre-dates any state contract to continue in that employment once the agency does contract with the state. This is so primarily because DMR will have had an opportunity to review the private agency's staff prior to entering into any contract with that agency.

Even if state money is used to hire the family member, a conflict of interest may be avoided if DMR approves the hiring after full consideration of the factors involved. Therefore, if an independent contractor is considering hiring or subcontracting with a family member under circumstances which will result in state payment or reimbursement for the work in question, he or she should notify DMR in writing of the possibility, and demonstrate to DMR why this individual is appropriate. DMR must determine whether this person is qualified for the job, and

also whether the compensation is market rate. If necessary, DMR may require the independent contractor to document a job search, analogous to the open and public process requirements of Conn. Gen. Stat. §1-84(i). That section requires a state employee or public official who wishes to contract with the state to go through an open and public process, including prior public offer of the contract opportunity and subsequent public disclosure of the responses received and the contract awarded.

Consistent with this ruling, DMR will administer its protocols to ensure compliance with §1-86e. If an independent contractor pursues an inappropriate hiring, or, for whatever reason, DMR fails to adhere to these protocols, the matter may become subject to an Office of State Ethics enforcement action, as a possible violation of Conn. Gen. Stat. §1-86e. Finally, it is important to note that the effect of this opinion is prospective.

By order of the Commission,

Stanely Burdick,  
Chairperson



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 99-15

#### **Application Of Ethics Rules To Acceptance Of Expense Payments To Accompany Department Of Mental Retardation Client To Event**

John Houchin, Director of the Eastern Region of the Department of Mental Retardation ("DMR"), has asked how the Code of Ethics for Public Officials, Conn. Gen. Stat. §1-79 et seq., applies when the employee of a private agency under contract with DMR accepts payment or reimbursement of expenses from a DMR client, or his or her family, to accompany the DMR client on an outing. Since similar issues often arise with state employees as well, this opinion will address acceptance of such benefits by both state and private employees.

The Code of Ethics prohibits a state employee from using his or her state position for financial gain. Conn. Gen. Stat. §1-84(c). Similarly, the Code of Ethics prohibits a person hired by the state as a consultant or independent contractor from using the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person, or a member of the immediate family of any such person or employee. Conn. Gen. Stat. §1-86e(a)(1). Therefore, the response to Dr. Houchin's inquiry is the same for private agency employees and state employees.

Turning to Dr. Houchin's question, if the state employee or private agency employee is expected to accompany an individual as part of his or her job, the least problematic solution under the Code would be for the private agency or DMR to pay for or reimburse the employee for reasonable expenditures incurred as part of that employee's job. So, for example, if a DMR client wishes to attend a particular movie, and in order to do so, must have an employee come as well, then DMR or the private agency should pay for the employee's ticket. If, however, DMR or the agency is not able to pay for such expenditures, but agrees that the activity is beneficial to the client, then the payment or reimbursement of the employee's expenses by the DMR client may be acceptable, provided that certain restrictions are followed.

When the recipient is a state employee, the idea for the outing should originate with the client, with his or her guardian, or with someone at DMR at or above the potential recipient's level. See, Conn. Gen. Stat. §1-86(a). If the proposal is deemed beneficial by DMR, the payment of the state employee's expenses will then qualify as a gift to the State which facilitates state functions. Conn. Gen. Stat. §1-79(e)(5). Under the Commission's applicable Regulation, if the payment is over \$50 and incidentally benefits the state employee, his or her supervisor must certify in writing to the Commission that the gift, in fact, facilitates state functions and is acceptable to the Agency. See, Regulations of Conn. State Agencies §1-81-27.

Analogously, for a private agency employee, the approval for acceptance of expenses valued at \$50 or more must come from DMR at a level above the interdisciplinary team. This is so because, according to Dr. Houchin, the interdisciplinary team itself generally includes the potential recipient.

The examples cited by Dr. Houchin include cases where the DMR client both has, and has not, been adjudicated incompetent. The same rules apply in either case, since the issue is acceptance of an improper benefit by the employee, not the competency of the donor to bestow the benefit.

Finally, whether the recipient is a state employee or a private one, only those expenses necessary to the outing should be accepted. For example, it would be appropriate to accept reasonable airfare, hotel accommodations, and meals for a trip to Florida, but the employee should provide his or her own spending money.

By order of the Commission,

Stanley Burdick,  
Chairperson





# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 99-17

#### *Application Of Gift Restrictions To Employees Of Private Agencies Under Contract With Department Of Mental Retardation*

John Houchin, Director of the Eastern Region of the Department of Mental Retardation ("DMR"), has asked how the gift restrictions of the Code of Ethics for Public Officials, Conn. Gen. Stat. 1-79 et seq., apply to employees of private agencies under contract with DMR.

The Code of Ethics prohibits a state employee from using his or her state position for financial gain. Conn. Gen. Stat. §1-84(c). The Code also contains strict limits on the gifts which a state employee may take from a registered lobbyist, someone doing business with, or attempting to do business with, the employee's agency or engaged in activities directly regulated by the agency. Conn. Gen. Stat. §§1-84(j) and (m). A state employee may not accept a tangible gift worth more than \$10, capped at \$50 from any one such source in a year, and may only accept up to \$50 worth of meals from such a source annually. *Id.* Furthermore the Office of State Ethics has recently held, under §1-84(c), that a state employee who is offered a benefit from an unregulated source as the result of his or her official position may accept up to \$100 in gifts from that source in a year. See, Advisory Opinion No. 98-9, 59 Conn. L. J. 45, p. 5D (5/5/98).

The section of the Code which applies to independent contractors and consultants hired by the state contains language similar to the "use of office" language of §1-84(c). Conn. Gen. Stat. §1-86e(a)(1) prohibits such a contractor or consultant from using the authority provided under the contract to obtain financial gain for the person, an employee of the person, or a member of the immediate family of any such person or employee. That section of the Code does not contain the more restrictive language of §§1-84(j) or (m). Therefore, an employee of a private agency under contract with DMR may accept benefits totaling up to \$100 annually from, for example, a client or a client's relative. Any larger benefit would violate §1-86e(a)(1). Compare, for example, Advisory Opinion No. 98-30, 60 Conn. L. J. 27, p. 7E (1/5/99) (DMR employee may not accept a bequest from a DMR client where the will was drawn up while the client was subject to the influence, control and/or authority of the DMR employee.) Also, of course, DMR may establish stricter gift rules as part of its contracting process.

By order of the Commission,

Stanley Burdick,  
Chairperson



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 99-19

#### Application Of Conn. Gen. Stat. §1-86e To Independent Contractors' Use Of State Funds To Benefit Related Party

John Houchin, Director of the Eastern Region of the Department of Mental Retardation ("DMR"), has asked how the restrictions of Conn. Gen. Stat. §1-86e apply to private agencies which contract with DMR and then use state funds to subcontract with or otherwise benefit related parties. Dr. Houchin has described a number of situations in which the independent contractor has control over both sides of a transaction involving the use of state funds, and would like the Commission to review the application of Conn. Gen. Stat. §1-86e to these situations.

According to Edward Morettini of the Office of Internal Audit at DMR, a private provider must report any related party transactions in its the annual audited financial report ("ACOR") submitted to DMR. Under Department of Income Maintenance regulations, the term "related parties" is broadly defined to mean any person or organization "related through marriage, ability to control, ownership, family or business association. Past ability to exercise influence or control need not be shown, only the potential or ability to directly or indirectly exercise influence or control." Regulations of Connecticut State Agencies §17-313b-1(19). By statute, "whenever costs are incurred between related parties, allowable costs shall be defined as and limited to cost to the related party." Conn. Gen. Stat. §1-313b. Mr. Morettini indicates that, under these rules, a related party may not make a profit even if a profit would normally be built into a fair market transaction. Salaries can be paid, but only at a fair market level.

Under Conn. Gen. Stat. §1-86e(a)(1), no person hired by the State as a consultant or independent contractor shall "use the authority provided to the person under the contract, to obtain financial gain for the person, an employee of the person, or a member of the immediate family of any such person or employee." In a recent advisory opinion, the Office of State Ethics held that a potential conflict of interest exists under this section if there is a nexus between the facts in question and the state money and authority granted to the independent contractor or consultant by contract. See Advisory Opinion No. 99-14, \_\_ Conn. L.J. No. \_\_, p.\_\_(\_/\_/99) (Before hiring or subcontracting with immediate family member, independent contractor must satisfy certain requirements and obtain DMR approval).

Turning to the specific facts presented in Dr. Houchin's letter, a number of the scenarios involve subcontracting by the independent contractor with companies controlled by the independent contractor, or with companies which control the independent contractor. In one example, a private provider uses his own company to perform subcontract work on properties he owns which are used as Community Living Arrangements ("CLAs"). In another example, the Connecticut private provider is controlled by an out-of-state parent company to which the Connecticut provider annually pays over \$500,000 in fees for management services, an

arrangement which appears to be well above the fair market value of such services. Of particular concern to DMR is the fact that funds derived from DMR contracts are used to pay the related parties of private providers for services where there has been no open and public bid process. According to Dr. Houchin's letter, the private provider and its related entity are able to "decide the price, how much of the service is to be provided or required, [and] who or what company is going to provide the service."

Conn. Gen. Stat. §1-86e does apply to these situations. As the Office of State Ethics stated in Advisory Opinion No. 99-14, cited above, a conflict of interest under this section can be avoided if the private agency fully discloses to DMR, in writing, the proposed subcontract and can demonstrate to DMR why this subcontract is an appropriate use of state funds. DMR must then determine whether the company is qualified to perform the services required, and also whether the contract rate is a fair market rate. In order to determine that rate, it may be necessary for DMR to require the private agency to advertise the contract opportunity in a manner analogous to Conn. Gen. Stat. §1-84(i). This means that the private agency would have to demonstrate to DMR that it had gone through an open and public contracting process, including a prior public offer of the contract opportunity and subsequent disclosure to DMR of the responses received and the contract awarded. See Advisory Opinion No. 99-14. Under Conn. Gen. Stat. §1-86e, a private provider may not, as described above, remit \$500,000 to a parent company without appropriate documentation.

Another type of scenario raised in Dr. Houchin's letter involves the leasing of rental properties owned by the private provider or an immediate family member to the private provider for housing for DMR clients. In one example, the private agency's executive director owns the homes rented by the private agency. The executive director thereby ensures that his rental properties will have little or no exposure to vacancy. His decision-making in his private capacity places rent-paying DMR clients in investment properties he owns. In another example, the executive director of a private agency and his wife own homes that are rented to the private agency. DMR is in effect paying the mortgages of those homes by paying the lease amounts. The executive director determined that the houses owned by him and his wife would be used as CLAs. As a result, rather than having the private provider buy these homes and build equity by paying the mortgage, the executive director and his wife retained ownership and built equity for themselves.

These situations demonstrate a direct conflict of interest under Conn. Gen. Stat. §1-86e. The executive directors of the private agencies have clearly used their authority under the contracts for their own financial gain. According to Dr. Houchin's letter, there was no attempt made to determine whether these arrangements were the best use of the state money that funds them. In the future, private agencies that wish to lease property owned by a principal or employee or an immediate family member must seek DMR approval before entering into such an arrangement. In order to obtain such approval, they must be able to meet the prerequisites outlined previously, including demonstrating that the arrangement is an appropriate use of state funds and that the lease to be paid is at a fair market rate. Also, of course, they must comply with the related party requirements as enforced by DMR and the Department of Social Services.

In several of the examples provided by Dr. Houchin, some employees of private agencies who may be personally benefiting from related party transactions have not allowed DMR to monitor the transactions to determine whether inappropriate profits have been made. In one

situation, for example, the executive director of the contracting agency is also the owner of a for-profit company with which the private agency subcontracts for staffing and maintenance purposes. If the executive director is obtaining direct financial gain from this subcontract, he may have used his authority under the contract in violation of Conn. Gen. Stat. §1-86e, as well as in violation of the related party regulations. To the extent that a private agency refuses to provide the information needed to determine compliance with state ethics law and regulations, it may be necessary for the Ethics Commission to commence an enforcement action.

In certain situations raised in Dr. Houchin's letter, the private agency's subcontract activity may so contravene the ethics law that DMR approval should be withheld unless changes are made to the existing arrangement. For example, the former executive director of one private agency, who at times also serves on the board of directors, leases vans to the private agency at a rate far above the market rate. This same individual also runs a real estate company from which the private agency leases space. The real estate company, which does not own the property, charges the private agency almost twice the monthly rent which is paid to the owner. Finally, the individual's son has been paid to provide lawn mowing and snow plowing services at a rate that seems well in excess of what is necessary for the property in question. In each of these three examples, it appears that, absent a showing to DMR that the arrangement is an appropriate use of state funds, the transaction violates Conn. Gen. Stat. §1-86e as an improper use of the authority granted under the state contract for financial gain to a prohibited individual.

In summary, transactions involving state funds and made between the parties covered by Conn. Gen. Stat. §1-86e will only be acceptable if the private agency involved has received prior written DMR approval. DMR should approve the arrangement only if the subcontractor is qualified to perform the required services, the services are necessary, and the compensation is at the market rate for the work which is actually performed. If an independent contractor fails to provide the appropriate documentation to DMR or pursues an improper transaction, or if, for any reason, DMR fails to adhere to these standards, the matter may become subject to an Office of State Ethics enforcement action, as a possible violation of Conn. Gen. Stat. §1-86e.

Finally, it should be noted that this opinion does not in any way preclude DMR from rejecting an arrangement for reasons other than a failure to comply with the Code of Ethics. For example, the "related party" regulations are broader in their scope than the restrictions under Conn. Gen. Stat. §1-86e. Therefore, the rules outlined in this opinion should not be read to restrict the application of any other statutes, regulations or rules which may apply to contracts made with DMR.

By order of the Commission,

Stanley Burdick,  
Chairperson

## **C. Other Correspondence**

1. Memorandum to Eastern Region Leadership Forum  
From: John F. Houchin, Sr., Ed.D.  
Date: November 5, 1998  
Re: Ethics Commissioner  
Attached: Ethics Commission Presentation by Brenda Bergeron, Attorney
  
2. Memorandum to John F. Houchin, Sr., Ed.D.  
From: Brenda Bergeron, Attorney  
Date: July 12, 1999  
Attached: July 9, 1999 letter from Dr. Houchin to Attorney Bergeron  
DMR Person-Centered Supports Agreement



John F. Houchin, Sr., Ed.D.

Regional Director  
DMR Eastern Region  
401 W. Thames Street  
Norwich, CT 06360

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Department of Mental Retardation

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November 5, 1998

To: Eastern Region Leadership Forum

From: John F. Houchin, Sr., Ed.D., Regional Director

RE: ETHICS COMMISSION

On October 21, 1998, the Eastern Region held a Special Leadership Forum Meeting to present the role of the Connecticut Ethics Commission's rules as it relates to DMR contracted agencies. Brenda Bergeron, Attorney from the Ethics Commission, presented information on what private providers were culpable for relating to State Ethics Laws. Because this information is important and violations can lead to fines and legal actions, minutes were taken (and reviewed by Ms. Bergeron) so those agencies not able to attend will have the information. In addition, I have enclosed the latest regulations for your review.

As indicated in the minutes, if you or your staff have a question regarding the Code of Ethics, please call the Ethics Commission at 860-566-4472.

See you at the next meeting on November 18, 1998.

JFH/jcm

cc: Peter H. O'Meara, Commissioner, DMR  
Linda Goldfarb, Deputy Commissioner, DMR  
Dawn Closs Harris, Agency Personnel Administrator, DMR  
Regional/Training School Directors



DMR EASTERN REGION  
LEADERSHIP FORUM MEETING  
October 21, 1998

ETHICS COMMISSION PRESENTATION

by

Brenda Bergeron, Attorney

The Ethics Commission is composed of a seven (7) member citizen commission and has a 10 person staff who works for the Commission. They administer a Code that applies to lobbyists and a Code for public officials and employees. These Codes are State Statutes. The Commission can prosecute for violations of the Code. They will also draft an opinion letter for anyone who refers a question to them. Their guidelines are available on the State of Connecticut Web Page.

1-84(m) entities applies to people or doing business with a State agency or attempting to do business or regulated by a State agency. Under 1-84(m) of the Code, is the gift ban. This is intended to prevent one from using public position for personal financial gain. Under this Code a state employee would not be able to accept a gift from a private provider greater than \$10.00 per gift and greater than a total of \$50.00 per year. They would be allowed to accept a ceremonial award/plaque if less than \$100.00 in value. They can accept meals up to \$50.00 in one year.

Under 1-86e, there are standards which apply to person(s) under contract with the State and would apply to the private providers. If an agency executive is going to hire a family member (immediate family) or if they have individuals they serve who will be renting property from a family member, the agency must notify DMR in writing of the proposed actions and of the owner's financial and familial connections with the matter. DMR would then approve or disapprove the actions, in writing, to the agency before they are implemented. This code applies only to members of the immediate family (individual, spouse, parent, brother, sister, child or spouse of child or business with which he/she is associated).

The question was posed asking if a client can make a donation to an agency. It is all right for them to do this if it is their own choice and if there is no personal financial gain. If the agency is "for profit" this could be a problem.

The question was posed whether it was okay for a client to pay for staff to accompany him/her to a social event. Ms. Bergeron suggested the agency get clearance from the State agency on this matter. A parallel question of whether the client can pay for the staff to accompany them on a major trip. In most cases the agency assumes the cost of the staff coverage and the client pays the staff's basic travel costs, meals, etc. There was some discussion among agencies as to whether the agency or client should pay for staff meals. Ms. Bergeron suggested in those cases the matter should be referred to the agency or Region's Ethics Code for direction.

DMR EASTERN REGION - Page 2  
LEADERSHIP FORUM MEETING  
October 21, 1998

Ms. Bergeron said that the following has not been ruled on formally by the Commission, but under their recent Advisory Opinion 97-22, suggested that we apply the following law in this way. Gifts from clients to private agency staff should follow the same guidelines as stated for public employees; cannot use their position/authority for personal financial gain and should follow the guidelines of only accepting gifts of less than \$10.00 value and no greater than \$50.00 per year.

A provider questioned whether it is a conflict of interest for a private agency person to become a client's guardian. Ms. Bergeron indicated the Ethics Code does not address all types of conflict of interest, but mainly those related to fiscal matters. The Commission is currently reviewing questions relating to a staff person who is a State employee being named as executor or beneficiary under a client will, as well as the issue of a State employee acting as guardian for a DMR client.

A member of the Forum posed the issue of the Executive Director who lobbies for revenue and how this would be reviewed by the Ethics Commission. The basic rule is that if more than \$2,000 is spent (money and time of staff included) within one year on lobbying or activities in furtherance of lobbying, then the agency must register as a lobbyist.

Informational Facts:

- #1 Call the Commission with questions - don't need to give name.
- Administrative lobbying occurs if an agency executive circumvents the normal contract process and may go to the Commissioner or Governor to discuss terms of their contract in an effort to affect the State agency's actions.
- If you have a vested interest in an issue, you cannot "donate" your time by speaking to someone who has influence with the issue, if you are being paid for that time.
- If you become a lobbyist, the gift ban applies to you.
- It is within the guidelines to have a legislator visit your agency assuming the cost to the agency would be less than \$2,000, when combined with all other lobbying activities for one year.
- It would be okay for a legislator to be a member of the board of a non-profit organization as long as he/she is not paid. It may be okay if he/she is paid, but the conflict of interest rules under the Code become more stringent.
- Normal Trade Association dues do not count toward the \$2,000 limit requiring registering as a lobbyist for a private agency.



DMR EASTERN REGION - Page 3  
LEADERSHIP FORUM MEETING  
October 21, 1998

- Special assessment fees added to the dues for legislative issues may count toward the \$2,000 threshold for a private agency which pays the assessment.
- The registration fee for becoming a lobbyist is \$150.00 for two (2) years with requirements to fill out paperwork monthly during the legislative session and otherwise three (3) times a year.
- Recommendation was made to keep records of contacts with legislators to verify your status as a lobbyist or non-lobbyist.
- "Pushing" to change regulations is lobbying.
- Contracts greater than \$100 made between the State and a State employee, his/her immediate family, or associated business must be awarded through an open and public process.

Consequences for Violations of the Code

1. Fined up to \$2,000 per violation.
2. If deliberate, can be prosecuted criminally.
3. If violation was \$100 or less, the matter will be handled administratively (e.g., give gift back); no complaint filed.
4. If violation was greater than \$100.00, a complaint may be filed and settled by stipulation of some fine, or after a series of confidential and then public hearings..

The review process is confidential until the case is settled or probable cause is established; it then becomes a matter of public record.

Ms. Bergeron indicated all agencies must adhere to the Ethics Standards of the State agency they contract with if they are more stringent than the Ethics Commission's standards. Just to reiterate, the answers to many of the questions raised would depend on specific facts and that it is imperative for people to contact the Commission with specific situations in order to make sure that the law is properly applied.

Any issues or questions can be referred to the Ethics Commission for review at (860-566-4472). If easy, you can get a quick phone answer or staff opinion letter. The Commission can also issue formal Advisory Opinions.

The next Leadership Forum Meeting is scheduled for Wednesday, November 18, 1998 at 9:00 a.m. for Providers and 9:30 a.m. with the Eastern Region staff in Conference Room 341. The Caring Community volunteered to host the meeting.

BB/JFH/BAG/jcm



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

July 12, 1999

John F. Houchin, Sr., Ed.D.  
Director, Eastern Region  
Department of Mental Retardation  
401 West Thames Street-Unit 202  
Norwich, CT 06360

Dear Dr. Houchin:

I am writing in response to your letter dated July 9, 1999. You have asked whether, under Advisory Opinion No. 99-12, the Person-Centered Supports Agreement is considered a services agreement, which would result in the application of Conn. Gen. Stat. §1-86e. The answer is "no," the agreement does not fall under that section, since it is not a contract for services but rather is the implementation of the Self-Determination process which the Ethics Commission has determined is not covered by §1-86e.

As always, please do not hesitate to contact me if you have any further questions regarding this or any other ethics issue.

Sincerely,

*Brenda M. Bergeron*  
Brenda M. Bergeron  
Ethics Commission Attorney

RAO 2459



STATE OF CONNECTICUT  
DEPARTMENT OF MENTAL RETARDATION  
*Eastern Region*

JOHN G. ROWLAND  
Governor

July 9, 1999

Brenda Bergeron, Esq.  
Connecticut Ethics Commission  
18-20 Trinity Street  
Hartford, CT 06106

Dear Brenda:

As we discussed on the phone, DMR is interested in clarification of Advisory Opinion 99-12 as it relates to the words, "Services Agreement," indicated in the last paragraph of the letter. I have attached a copy of the Person-Centered Supports Agreement that DMR enters into with the individual/family when they participate in the Self-Determination process. Please clarify if this document would or would not be considered a "Services Agreement" as stipulated in the last paragraph of the above Advisory Opinion letter.

As we have discussed, the focus of Self-Determination, through the Person-Centered Support Agreement, enables the individual/family the opportunity to choose whom, what, when, where, and how they, as individuals, receive their supports. The attached agreement is a way for the individual/family to have that control.

If you have any questions or clarifications please call me.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "John F. Houchin, Sr.", written in a cursive style.

John F. Houchin, Sr., Ed. D.  
Regional Director

JFH/pb  
Attachment



**DEPARTMENT OF MENTAL RETARDATION  
PERSON-CENTERED SUPPORTS AGREEMENT**

Region:

This agreement is to clarify the terms for receipt of person-centered supports from the Department of Mental Retardation including the department funding dedicated to person-centered supports identified under this agreement, the supports and services to be provided or purchased, the proposed support providers, the payment authorization mechanisms, and the documented accounting requirements.

**TERMS OF AGREEMENT**

**Recipient or Sponsoring Family Member**

**Social Security #**

**Address**

**City, State, Zip Code**

**Person for Whom Funds are Requested**

**DMR #**

**I hereby agree to receive person-centered supports and adhere to the following:**

- I understand that I will be required to be an active participant in the development and implementation of the person-centered support plan that includes the following:
  - ◊ Supports and services to be obtained or provided
  - ◊ Anticipated outcomes to be achieved
  - ◊ Timelines for implementing the support plan
  - ◊ Proposed support providers
  - ◊ Individualized budget
  - ◊ Payment authorization process
  - ◊ Monitoring and reporting process.
- I understand that any significant changes to the person-centered support plan must be approved by the department.
- I understand that I must submit a quarterly outcome report to the regional coordinator that includes, at a minimum, a narrative of progress toward desired outcomes during that quarter.
- I understand that I will be an active participant in the selection and ongoing monitoring of supports and services.
- I understand that my participation may affect the receipt of other services from the department that I or my sponsoring family member currently receive.
- I understand that if payments for supports and services are made by a fiscal intermediary, I must also adhere to the requirements identified on Schedule A of this agreement.
- I understand that if I receive a cash subsidy from the department, I must also adhere to the requirements identified on Schedule B of this agreement.
- I understand that if the department makes payments for supports and services through a contract with a provider, I must also adhere to the requirements identified on Schedule C of this agreement.

The Department of Mental Retardation hereby agrees to the following:

- The Department of Mental Retardation will work with the fiscal intermediary of your choice, provide a cash subsidy, or arrange supports and services under contract with a provider as outlined in the approved person-centered support plan attached to this agreement.

**Person-Centered Support Plan**

The person-centered support plan should be attached and should describe the supports to be obtained, outcomes to be achieved, timelines, proposed support providers, and monitoring and reporting processes.

**Individualized Budget**

The total amount of funds covered under this agreement is up to: \$ \_\_\_\_\_. The individualized budget should be attached and describe the funding amount, the planned distribution of funds, the agreed upon payment process and schedules, the payment authorization process to be used for direct payments to support providers, any special conditions of payment and expenditure reporting requirements.

The following is the distribution of funds covered by this agreement:

**Cash Subsidies**

☐ Fiscal Intermediary

Account	Fiscal Intermediary	\$ Amount
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☐ Fiscal Intermediary

Account	Fiscal Intermediary	\$ Amount
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☐ Subsidy

Account	Recipient/Sponsoring Family Member	\$ Amount
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**Contracts**

☐ Contract

Account	Provider	\$ Amount
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☐ Contract

Account	Provider	\$ Amount
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This agreement is effective from: \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Recipient or Sponsoring Family Member

Signed: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Regional Director

Approved: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Commissioner or Designee

This agreement shall become effective upon written approval by the Central Office of the Department of Mental Retardation and shall supersede any previous agreements entered into by both parties. This agreement may be terminated without cause upon thirty days' written notice by either party. The department has the right to terminate this agreement upon 24 hours' notice when the department deems the health or welfare of the person receiving supports is endangered. All unexpended funds must be returned at the request of the department.

## SCHEDULE A

This schedule should be attached to all agreements that include plans to make payments for supports and services by a fiscal intermediary.

I hereby agree to work with a fiscal intermediary and to adhere to the following:

- I agree to enter into an agreement with a fiscal intermediary that is under contract with the department.
- I understand that any payments made by the fiscal intermediary under this agreement may be used only for items or services as outlined in the person-centered support plan.
- I understand that any special equipment, furnishings, or items purchased under the person-centered support plan are the property of the service recipient and will be transferred to his or her new place of residence or activity at such time as there is a change of residence or day service.
- I understand that the fiscal intermediary will assist me to make any required payments for mandatory employment benefits such as FICA, FUTA, and Unemployment Compensation if I hire an employee with funds provided by the Department of Mental Retardation.
- I understand that I must submit timesheets, receipts, invoices, expenditure reports, or other documentation that services were provided or supports were purchased to the fiscal intermediary on a monthly basis/within the agreed upon timeframe.
- I understand that the fiscal intermediary will provide monthly reports of expenditures made under this agreement.
- I understand that the fiscal intermediary will assist me to complete any required employer forms or documents.
- I understand that any funds held by the fiscal intermediary that are not expended under the terms of this agreement must be returned to the department, upon request.
- I agree to provide feedback to the department regarding the performance of the fiscal intermediary.

\_\_\_\_\_  
Recipient or Sponsoring Family Member

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



## SCHEDULE B

This schedule should be attached to all agreements that include cash subsidies to service recipients or their sponsoring family member.

I hereby agree to receive a cash subsidy to purchase supports and services and to adhere to the following:

- I understand that any funds received under this agreement may be used only for items or services as outlined in the person-centered support plan.
- I understand that any special equipment, furnishings, or items purchased under the person-centered support plan are the property of the service recipient and will be transferred to his or her new home or activity at such time as there is a change of residence or day service.
- I understand that I am responsible for making any required payments for mandatory state and federal employment benefits such as FICA, FUTA, and Unemployment Compensation if I hire a support provider with subsidy funds provided by the Department of Mental Retardation.
- I understand that receipt of a cash subsidy may affect other state or federal benefits or entitlements that I currently receive, such as Supplemental Security Income (SSI) or Medicaid (Title XIX), or may affect state or federal benefits and entitlements that my sponsoring family member currently receives such as (TANF), Medicaid, or Section 8 Housing. Resolution of these issues will be handled on a case by case basis with the support of DMR staff.
- I understand that, with the receipt of a cash subsidy, I must submit expenditure reports for the purpose of documenting the accounting requirements. The annual amount of the cash subsidy will determine the frequency and the information to include in the expenditure report as outlined below:
  1. 0-\$3,000 Expenditure reports must be submitted quarterly and include:
    - a. A list of purchases or services used during the quarter
    - b. Service recipient and/or family should maintain receipts or supporting documentation of expenditures for their personal records.
  2. \$3,000 - \$12,000 Expenditure reports must be submitted quarterly and include:
    - a. An itemized list and costs of supports and services used during the quarter
    - b. A separate checking account is required. Submit copies of checkbook ledger and bank statements for the quarter
    - c. Invoices, receipts, time sheets of service hours provided, or other documents that substantiate services were rendered during the quarter.
  3. Over \$12,000 Expenditure reports must be submitted monthly for the first six months of receipt of a cash subsidy and quarterly thereafter and should include:
    - a. An itemized list and cost of supports and services used during the time period
    - b. A separate checking account is required. Submit copies of the checkbook ledger and bank statement for the time period
    - c. Invoices, receipts, time sheets of service hours provided, or other documents that substantiate services were rendered during the time period.
- I understand that, with the receipt of a cash subsidy, expenditure reports and outcome reports are due to the regional coordinator monthly when required or on October 15, January 15, April 15, or July 15 during the time period covered under this agreement.
- I understand that subsequent cash subsidy payments may be withheld if expenditure and outcome reports are not received by due dates.
- I understand that, upon request, I must return any subsidy funds provided by the department that are not expended during the terms of this agreement or in accordance with the person-centered support plan.

\_\_\_\_\_  
Recipient or Sponsoring Family Member

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## SCHEDULE C

This schedule **should be attached to all agreements** that include plans for the department to enter into a contract with a private provider chosen by the recipient or his or her sponsoring family member to provide supports and services as identified in the person-centered support plan.

I hereby agree to receive supports and services from the provider I select and to adhere to the following:

- I agree to enter into an agreement with the provider that identifies the specific supports and services the provider will be responsible for as identified in the person-centered support plan. The agreement will include the type, amount, and cost of supports and services including the hours of support to be provided and the agreed upon fee.
- I understand that any payments made to the provider under this agreement may be used only for supports or services as outlined in the person-centered support plan.
- I understand that payments for supports and services made by the department under contracts or other payment authorizations will be processed according to standard procedures and time frames, and that providers will be required to adhere to established monitoring and reporting requirements.
- I agree to provide feedback to the department regarding my satisfaction with the performance of the provider.
- I understand that supports and services paid for by the department under contract with a provider may be changed at the request of the service recipient or family upon 30 days notice to the department.

\_\_\_\_\_  
Recipient or Sponsoring Family Member

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_